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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3 UNITED STATES OF AMERICA,) CRIMINAL NO. 19-00099-DKW
4 Plaintiff,) Honolulu, Hawaii
5 vs.) July 22, 2024
6)
7 MICHAEL J. MISKE, JR.,)
8 Defendant.)
_____)

9
10 TRANSCRIPT OF JURY TRIAL (DAY 104)
11 BEFORE THE HONORABLE DERRICK K. WATSON,
12 CHIEF UNITED STATES DISTRICT COURT JUDGE

13 APPEARANCES:

14 For the Plaintiff: MARK INCIONG, ESQ.
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300 Ala Moana Boulevard
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Proceedings recorded by machine shorthand, transcript produced
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I N D E X

GOVERNMENT WITNESSES:

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CRYSTAL YOUNG

DIRECT EXAMINATION BY MS. AFFINITO

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GREGORY TURNER

DIRECT EXAMINATION BY MR. AKINA

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EXHIBITS:

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Exhibit 11-3 was received in evidence

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Exhibit 11-11 was received in evidence

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Exhibit 11-8 was received in evidence

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Exhibit 11-20 was received in evidence

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Exhibit 11-6 was received in evidence

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Exhibit 11-9 was received in evidence

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Exhibit 11-25 was received in evidence

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Exhibit 11-22 was received in evidence

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Exhibit 11-34 was received in evidence

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Exhibit 11-19 was received in evidence

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Exhibit 11-28 was received in evidence

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Exhibit 11-51 was received in evidence

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Exhibit 11-54 was received in evidence

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Exhibit 11-36 was received in evidence

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Exhibit 11-41 was received in evidence

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Exhibit 11-53 was received in evidence

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Exhibit 11-55 was received in evidence

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Exhibit 11-56 was received in evidence

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Exhibit 11-59 was received in evidence

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Exhibit 11-60 was received in evidence

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Exhibit 11-67 was received in evidence

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Exhibit 9-1199 was received in evidence

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Exhibit 11-72 was received in evidence

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Exhibit 11-71 was received in evidence

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Exhibits 11-73 through 11-79 were received in evidence

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Exhibits 11-80 through 11-82 and 11-84 through 11-89 were received in evidence

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Exhibit 11-63 was received in evidence

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Exhibit 11-91 was received in evidence

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1 July 22, 2024 8:41 a.m.

2 (Open court out of the presence of the jury.)

08:41AM 3 THE CLERK: Criminal Number 19-00099-DKW-KJM, United

08:41AM 4 States of America versus Michael J. Miske, Jr.

08:41AM 5 This case has been called for jury trial, Phase 2,

08:41AM 6 Day 104.

08:41AM 7 Counsel, please make your appearances for the record.

08:42AM 8 MR. INCIONG: Good morning, Your Honor. Mark Inciong,

08:42AM 9 KeAupuni Akina, Aislinn Affinito, and Michael Nammar for the

08:42AM 10 United States. Today we have our paralegal Collin Vickers with

08:42AM 11 us as well as FBI Special Agent Tom Palmer.

08:42AM 12 THE COURT: Good morning.

08:42AM 13 MR. KENNEDY: Good morning, Your Honor. Michael

08:42AM 14 Kennedy with Lynn Panagakos, Michael Miske, Ashley King, and

08:42AM 15 Josh Barry.

08:42AM 16 THE COURT: Good morning. You may be seated.

08:42AM 17 Before we bring the jury in, there are a few issues to

08:42AM 18 review regarding matters that were brought to my attention over

08:42AM 19 this past weekend.

08:42AM 20 In no particular order, there is the issue of what the

08:42AM 21 defense refers to as the government's late production of

08:42AM 22 forfeiture trial exhibits. That is not only the introduction

08:42AM 23 of the issue, it is the end of the issue as far as I'm aware.

08:42AM 24 So does someone wish to elaborate on this?

08:42AM 25 MS. PANAGAKOS: Your Honor, we received 99 new

08:42AM 1 exhibits late last night -- I mean, well, 8:20 last night, and
08:43AM 2 that the government intends to use for the forfeiture hearing.
08:43AM 3 And we just haven't had sufficient time to review and make use
08:43AM 4 of them. I mean, I haven't even been able to print them out
08:43AM 5 and select what I would use for cross-examination. You know, I
08:43AM 6 just completely -- not enough time to prepare to use them.
08:43AM 7 So --

08:43AM 8 THE COURT: Are these 99 exhibits that have -- that
08:43AM 9 are not in --

08:43AM 10 MS. PANAGAKOS: Correct.

08:43AM 11 THE COURT: -- the 10,000 binders I have behind me?

08:43AM 12 MS. PANAGAKOS: Correct.

08:43AM 13 THE COURT: These are brand new exhibits that you had
08:43AM 14 not previously been notified as having been exhibits.

08:43AM 15 MS. PANAGAKOS: Correct. We got five summary charts
08:43AM 16 on Saturday, which are included within the 99. So five on
08:43AM 17 Saturday and the rest of the 99 last night, yeah.

08:43AM 18 THE COURT: All right. Who wants to address this for
08:43AM 19 the government?

08:43AM 20 MR. INCIONG: Your Honor, we filed them as soon as we
08:43AM 21 could. It was not a case of, you know, waiting until --
08:43AM 22 obviously we didn't have a verdict until Thursday afternoon,
08:44AM 23 and we were working on it over the weekend and deciding what we
08:44AM 24 needed and what we didn't need, trying to be as efficient as
08:44AM 25 possible.

08:44AM 1 I would point out during the defense case we never got
08:44AM 2 an exhibit list before 10:00 p.m. on any day. In many cases it
08:44AM 3 was 1:00 or 2:00 in the morning, and that was -- so, I mean,
08:44AM 4 this is kind of the way it's been in this case.

08:44AM 5 MS. PANAGAKOS: Your Honor, may I respond to that?

08:44AM 6 THE COURT: Yes, of course.

08:44AM 7 MS. PANAGAKOS: Our exhibit lists that were filed the
08:44AM 8 night before were impeachment exhibits to cross-examine
08:44AM 9 witnesses, not --

08:44AM 10 MR. INCIONG: I'm talking about the defense case.

08:44AM 11 MS. PANAGAKOS: And we did have -- you know, the one
08:44AM 12 time that's analogous is with the Ken Hines summaries, and the
08:44AM 13 government was given extra time to go over them.

08:44AM 14 And that's all I'm asking. I mean, I wouldn't object
08:44AM 15 to the direct testimony today, but if we could just -- I guess
08:44AM 16 my proposal would be to have Mr. Hines, who is here, be able to
08:44AM 17 sit in on today's hearing and have the direct testimony today,
08:44AM 18 and let me cross the IRS people tomorrow.

08:45AM 19 THE COURT: How many of these 99 exhibits did the
08:45AM 20 government intend to offer through the witnesses that are
08:45AM 21 identified for today? All of them?

08:45AM 22 MR. INCIONG: I would estimate half, Your Honor.

08:45AM 23 MS. PANAGAKOS: Your Honor, I would just also point
08:45AM 24 out that some of them weren't even in the discovery from -- you
08:45AM 25 know, that's how new they are.

08:45AM 1 THE COURT: Okay. So the government -- so,
08:45AM 2 Ms. Panagakos, as I understand her objection, isn't saying that
08:45AM 3 these exhibits should be excluded. It's just that she needs
08:45AM 4 more time to prepare. So given the disclosure at 8:18 last
08:45AM 5 night, it doesn't seem unreasonable of a request to me.
08:45AM 6 So the government has a choice. You can wait until
08:46AM 7 tomorrow's proceedings and utilize the witnesses that are --
08:46AM 8 that you intend to introduce these -- one or more of these 99
08:46AM 9 exhibits or you can present them on direct, as Ms. Panagakos
08:46AM 10 has offered that they don't have an objection to that. But if
08:46AM 11 their direct is done today, the cross-examination would be
08:46AM 12 reserved until tomorrow to give her another day or another
08:46AM 13 evening to review these documents. It doesn't matter to me
08:46AM 14 what -- what the government chooses to do.
08:46AM 15 Okay. So that's the first issue.
08:46AM 16 The second one is relating to the use of hearsay.
08:46AM 17 Does anyone -- I've read the two briefs on this subject. Does
08:46AM 18 anyone wish to be heard further? Otherwise, I'm prepared to
08:46AM 19 rule.
08:46AM 20 MR. AKINA: Yes, Your Honor.
08:46AM 21 THE COURT: Mr. Akina.
08:47AM 22 MR. AKINA: A couple of responses to the defense's
08:47AM 23 objection. This is clearly -- we're clearly now past the
08:47AM 24 conviction stage, past the guilt stage. This is the forfeiture
08:47AM 25 stage. It's under sentencing. So that's how it's structured

08:47AM 1 under the rules. That's what every case I've seen has

08:47AM 2 indicated, Supreme Court down to this district.

08:47AM 3 There is -- just because the trier of fact has

08:47AM 4 changed, judge versus jury, that doesn't change the burden of

08:47AM 5 proof. It doesn't change standard of proof either. This is

08:47AM 6 part of sentencing. That's why we have preponderance of the

08:47AM 7 evidence standard. That's what the committee notes, the 32.2

08:47AM 8 notes. That's the same reason why admissible -- hearsay is

08:47AM 9 admissible in this type of proceeding. There's a different set

08:47AM 10 of rules now. The rules are now it must be relevant and

08:47AM 11 reliable.

08:47AM 12 The distinction the defense tries to draw, I don't

08:48AM 13 really see it. The distinction between a judge making the

08:48AM 14 decision versus a jury making the decision, that's going to be

08:48AM 15 the same decision that they have to come to the conclusion of.

08:48AM 16 What's the nexus? Rule 32.2 lays out -- besides that, lays out

08:48AM 17 the same procedure.

08:48AM 18 So for those reasons -- I would also note we didn't

08:48AM 19 identify anything specific. We did indicate -- included some

08:48AM 20 case law about coconspirator statements at the time we were

08:48AM 21 considering maybe doing that. We don't plan on introducing

08:48AM 22 coconspirator statements at this phase of the trial as well,

08:48AM 23 but nonetheless, I don't think that changes the standard.

08:48AM 24 THE COURT: Okay. Ms. Panagakos or Mr. Kennedy.

08:48AM 25 MS. PANAGAKOS: Yes, Your Honor. You know, Mr. Akina

08:48AM 1 says he doesn't see a difference between judge and jury.

08:48AM 2 There's obviously a big one. Rule 32.2 does not talk about

08:48AM 3 admissibility of hearsay when it's before the jury. You know,

08:49AM 4 there will be a different time, at sentencing or maybe before

08:49AM 5 sentencing, when the court issues a preliminary order of

08:49AM 6 forfeiture. That's not this proceeding. That's what 32.2, the

08:49AM 7 first section on what the court can consider.

08:49AM 8 I mean it's very clear. The language of the rule says

08:49AM 9 what the court can consider. And that's at a different stage,

08:49AM 10 which is sentencing. This is Phase 2 of a jury trial. They

08:49AM 11 didn't cite a single case where hearsay was admissible to a

08:49AM 12 jury of where the sentencing standard as to what evidence can

08:49AM 13 be considered is what applies to a jury, they didn't set a

08:49AM 14 single case which says that.

08:49AM 15 You know, I would note that there is the circuit split

08:49AM 16 on the standard of proof. You know, that may be resolved by

08:49AM 17 the Supreme Court some day. You know, we have our objection

08:49AM 18 preserved on that. But, you know, that also goes to why it

08:49AM 19 should be the Rules of Evidence should apply.

08:49AM 20 And now they're saying they didn't -- I'm sorry, Your

08:49AM 21 Honor.

08:49AM 22 THE COURT: No, go ahead.

08:49AM 23 MS. PANAGAKOS: Now they're saying they don't intend

08:50AM 24 to introduce coconspirator statements. Well, what hearsay do

08:50AM 25 they introduce? I mean, there at least has to be -- if Your

08:50AM 1 Honor is going to apply the sentencing due process standard,
08:50AM 2 which we object to for the reasons we cited, you know, there at
08:50AM 3 least has to be some showing of reliability and some extrinsic
08:50AM 4 evidence we could cross on, and we don't even know what that
08:50AM 5 is. So we'd at least need to know that in advance. Thank you,
08:50AM 6 Your Honor.

08:50AM 7 THE COURT: All right. So in addressing this issue --
08:50AM 8 and for the record, the relevant briefs are at Docket 1724 and
08:50AM 9 1726 -- the government cites a number of cases. In my mind,
08:50AM 10 the two principle ones are the Davila and Haleamau cases. Both
08:50AM 11 of those cases involve the determination that hearsay is
08:50AM 12 permitted in forfeiture proceedings before the court.

08:51AM 13 The defense quarrels with those two citations, but of
08:51AM 14 course offers none of its own relating to the use of hearsay in
08:51AM 15 any kind of proceedings. The defendant tries to distinguish
08:51AM 16 the government -- all of the government's cases, including
08:51AM 17 Haleamau and Davila, but does not offer any authority of its
08:51AM 18 own, except for one. The one exception is Federal Rule of
08:51AM 19 Evidence 1101. And there that citation is for the proposition
08:51AM 20 that the Federal Rules of Evidence apply and do not apply in
08:51AM 21 certain circumstances.

08:51AM 22 And the enumerated proceedings that 1101 says the
08:51AM 23 Rules of Evidence do not apply, according to the defense, is
08:51AM 24 forfeiture. It does not say -- does not provide an exception
08:52AM 25 for the Rules of Evidence in forfeiture proceedings. And while

08:52AM 1 that is objectively true, 1101(d)(3) says that the rules do not
08:52AM 2 apply in sentencing proceedings. Forfeiture is part of
08:52AM 3 sentencing. The government has made that assertion, and
08:52AM 4 there's been no argument or citation to the contrary by the
08:52AM 5 defense. That is a material issue.

08:52AM 6 But like Mr. Akina, I do not see there being a
08:52AM 7 material difference, a substantive difference in who the fact
08:52AM 8 finder is. So where these courts have said that hearsay is
08:52AM 9 permitted in forfeiture proceedings before the court, I see no
08:52AM 10 difference -- no reason to rule otherwise when those same
08:53AM 11 proceedings come before the jury.

08:53AM 12 Now, that doesn't mean that all hearsay is permitted,
08:53AM 13 and I don't think either side, including the government, is
08:53AM 14 suggesting otherwise. There must be some indicia of
08:53AM 15 reliability, and the fact that it's hearsay is perhaps right
08:53AM 16 away some indicia of unreliability. But so long as that
08:53AM 17 standard is met, what the government refers to as both
08:53AM 18 procedural or substantive reliability, I see no reason why that
08:53AM 19 could not be as a matter of law allowed for consideration by
08:53AM 20 the -- by the jury.

08:53AM 21 I can't provide more specifics because I've been given
08:53AM 22 no more specifics in terms of what hearsay the government sees
08:53AM 23 as coming down the pipe over the next couple of days. So we
08:53AM 24 will have to reserve until that occurs.

08:53AM 25 The last issue that was briefed over the weekend

08:54AM 1 relates to the defense motion that is styled to preclude the
08:54AM 2 government from arguing forfeiture theories which are
08:54AM 3 inadequate as a matter of law. The relevant briefs are at 1725
08:54AM 4 and I'm not sure what the government's opposition was docketed
08:54AM 5 at, perhaps at 1727, but I'm not certain of that.

08:54AM 6 MR. KENNEDY: Your Honor, just so the record is clear,
08:54AM 7 I believe it's at 1728.

08:54AM 8 THE COURT: All right. Thank you. My version that I
08:54AM 9 have in front of me is an undocketed copy that I think we got
08:54AM 10 via email.

08:54AM 11 All right. Who wishes to be heard on this? It seems
08:54AM 12 like the defense ought to go first, it's their motion.

08:54AM 13 MS. PANAGAKOS: Thank you, Your Honor. You know,
08:54AM 14 during jury instructions we objected to the RME fraud
08:54AM 15 instruction, folded into the wire fraud instruction, which the
08:54AM 16 Court sustained that objection. And now we're -- now it's --

08:55AM 17 THE COURT: I sustained the objection to including --
08:55AM 18 including specific language regarding RME fraud in the jury
08:55AM 19 instructions, but I did not sustain the objection with respect
08:55AM 20 to whether the government can proceed with RME fraud as a
08:55AM 21 theory. And in fact, I don't think the government did abstain
08:55AM 22 or abdicate that theory in -- in what remained of the
08:55AM 23 proceedings, including closings thereafter.

08:55AM 24 MS. PANAGAKOS: Right, Your Honor, and that, you know,
08:55AM 25 we made a general Rule 29 motion as to Count 1, but there was

08:55AM 1 no substantive wire fraud count charging the RME fraud theory.

08:55AM 2 So there was no, you know, procedural vehicle to move to

08:55AM 3 dismiss a count pursuant to Rule 29.

08:55AM 4 So now that we're at the forfeiture phase, and in

08:55AM 5 looking at Special Agent Turner's affidavit, and he's on the

08:56AM 6 witness list, it looks like from my reading of the affidavit

08:56AM 7 that legally inadequate theory was presented. The theory being

08:56AM 8 that we're arguing is inadequate is that -- you know, that the

08:56AM 9 license is not -- they did not obtain property by making a

08:56AM 10 false statement to the DCCA.

08:56AM 11 Now, if there are other false statements made to

08:56AM 12 customers, that's a different issue. But simply saying, you

08:56AM 13 know, PCO -- I have license PCO 24, that we're arguing is not a

08:56AM 14 false statement.

08:56AM 15 And so that's the only argument is that narrow

08:56AM 16 argument that we're trying to preclude -- Forfeiture Verdict

08:56AM 17 Number 3 asks whether or not, you know, these items are

08:56AM 18 proceeds of racketeering activity. And so we're seeking to

08:56AM 19 preclude the argument that they're proceeds of wire fraud based

08:56AM 20 on the issuance of the license pursuant to the false statement.

08:57AM 21 If there's a particular statement made to a customer that the

08:57AM 22 government contends is false, that's a different issue.

08:57AM 23 But many of these customers were told nothing about

08:57AM 24 licensing. I mean, they are -- you know, it's the distinction

08:57AM 25 between -- you know, you hold yourself out as licensed, which

08:57AM 1 they are, each of these entities have a license. It's -- you
08:57AM 2 know, in holding yourself out as licensing -- as licensed,
08:57AM 3 you're not saying, I'm complying with every rule about
08:57AM 4 principal RMEs, and my principal RME is on site, and this means
08:57AM 5 my contract is signed by the person who is authorized to sign
08:57AM 6 it. All of those representations are not folded into a simple
08:57AM 7 representation that I'm licensed.

08:57AM 8 You know, so -- and if Mr. Miske signed a contract
08:57AM 9 instead of Mr. Kansaki, that's not a false statement. So
08:57AM 10 that's the argument we're trying to preclude.

08:57AM 11 THE COURT: But as much as we know about the jury's
08:57AM 12 verdict on Count 1, as a subissue within Count 1, the jury was
08:58AM 13 asked to make findings with regard to the number of acts, if
08:58AM 14 any, on various types of racketeering activity. Wire fraud
08:58AM 15 being one of those. And in response to that query and that
08:58AM 16 responsibility by the jury, they elected a finding of two or
08:58AM 17 more acts of wire fraud.

08:58AM 18 Now, we don't know what kind of wire fraud. There
08:58AM 19 were a number of different events that the government cited as
08:58AM 20 the basis, but that is as much as we know. And now you're
08:58AM 21 saying that we should tell the jury they can't consider RME
08:58AM 22 fraud as one of the types of wire fraud that can connect
08:58AM 23 Mr. Miske's conduct to the various types of property at issue
08:58AM 24 here?

08:58AM 25 MS. PANAGAKOS: No. I'm not saying the jury should be

08:58AM 1 instructed. I'm saying the government should limit its
08:58AM 2 instructions to false statements made to customers. I'm not
08:59AM 3 saying that, you know, because they obtained the license
08:59AM 4 through alleged false statements, that means the customers were
08:59AM 5 defrauded. That the argument should be, you know, limited to,
08:59AM 6 tailored to what false statements were made to customers.
08:59AM 7 THE COURT: Okay. Mr. Inciong, did you want to
08:59AM 8 respond, or Mr. Akina?
08:59AM 9 MR. INCIONG: Ms. Affinito will.
08:59AM 10 THE COURT: Ms. Affinito, okay.
08:59AM 11 MS. AFFINITO: Thank you, Your Honor. So the purpose
08:59AM 12 of the forfeiture portion of this trial is to determine whether
08:59AM 13 property has a sufficient nexus to the crime of conviction,
08:59AM 14 which is racketeering conspiracy. It's not any sort of
08:59AM 15 underlying substantive charges or even specific racketeering
08:59AM 16 acts. It's the general racketeering conspiracy.
08:59AM 17 And the jury may consider any relevant conduct or
08:59AM 18 evidence that establishes that nexus. Indeed, before the jury
08:59AM 19 is the entirety of evidence that was presented at trial, which
08:59AM 20 includes uncharged conduct that served as enterprise proof, as
09:00AM 21 well as lawful conduct that might have served as evidence of
09:00AM 22 the conspiracy, as well as all of the evidence surrounding the
09:00AM 23 RME fraud. They've already heard all of this evidence, and
09:00AM 24 they're permitted to consider it in determining whether there
09:00AM 25 is a sufficient nexus.

09:00AM 1 The government is not limited to specific legal
09:00AM 2 theories which the jury is not going to be deciding the
09:00AM 3 sufficiency is of at this stage. And again, it doesn't make
09:00AM 4 sense to preclude them from hearing additional evidence or
09:00AM 5 argument on RME fraud when they've already considered it and
09:00AM 6 potentially convicted the defendant on it.

09:00AM 7 The RME fraud was presented as a racketeering act, and
09:00AM 8 we maintain that the way it was presented, it was a different
09:00AM 9 and legally sufficient theory. It's based on obtaining
09:00AM 10 money -- not property, not licenses -- it was based on
09:00AM 11 obtaining money from customers by making misrepresentations to
09:01AM 12 them. Those misrepresentation happen to be whether the
09:01AM 13 companies are properly licensed.

09:01AM 14 But in any event, the government is not limited to
09:01AM 15 racketeering acts to establish the necessary nexus between
09:01AM 16 forfeitable property and the racketeering conspiracy. It can
09:01AM 17 rely on conduct like, for example, the separate DCCA fraud not
09:01AM 18 presented by the government as wire fraud if it helps establish
09:01AM 19 that nexus. Thank you.

09:01AM 20 THE COURT: Anything else with respect to this motion,
09:01AM 21 not just the RME fraud issue?

09:01AM 22 MS. PANAGAKOS: Your Honor, just one of the points we
09:01AM 23 made in our motion is that, you know, we're trying to prevent
09:01AM 24 an end run around Cleveland. And Cleveland, obviously the
09:01AM 25 defendants used the license to then conduct their business.

09:01AM 1 And that's, you know, the distinction between -- you can't -- I
09:01AM 2 mean, you can't just get end run around the case by saying you
09:01AM 3 can't then use your license. If it's separate false
09:01AM 4 statements, that's a different story, but the use of a license
09:01AM 5 is not in itself a false statement. The representation that
09:01AM 6 you now have the license is not a false statement. That's what
09:02AM 7 we're trying to preclude. Thank you, Your Honor.

09:02AM 8 THE COURT: Anything else?

09:02AM 9 MS. AFFINITO: No, Your Honor.

09:02AM 10 THE COURT: Motion is denied.

09:02AM 11 Openings. Both sides wish to enter an opening
09:02AM 12 argument on Phase 2? I assume that to be the case, but maybe I
09:02AM 13 shouldn't.

09:02AM 14 MR. INCIONG: Yes.

09:02AM 15 THE COURT: All right. I assume they're also
09:02AM 16 relatively brief?

09:02AM 17 MR. INCIONG: Yes, very.

09:02AM 18 THE COURT: All right. And the defense wishes to make
09:02AM 19 an opening as well?

09:02AM 20 MS. PANAGAKOS: Yes, Your Honor.

09:02AM 21 And before we start, can -- would it be all right if
09:02AM 22 Ken Hines sits in this portion of the trial?

09:02AM 23 THE COURT: Who's -- who's Ken Hines?

09:02AM 24 MS. PANAGAKOS: Oh, Ken Hines is the -- our witness.
09:02AM 25 He testified at the trial, and --

09:02AM 1 THE COURT: We had hundreds of witnesses. I'm sorry,
09:02AM 2 I don't recall who Ken Hines is.

09:02AM 3 MS. PANAGAKOS: Right. He testified as our expert
09:02AM 4 with regard to summaries of tax returns and how much tax was
09:02AM 5 reported, the former IRS agent. And I'm just asking for an
09:02AM 6 exception to the exclusionary rule for this portion of the
09:03AM 7 proceedings, especially in light of the late production of the
09:03AM 8 exhibits, he will be able to help me get ready tonight.

09:03AM 9 THE COURT: Any issue along that?

09:03AM 10 MR. INCIONG: No, Your Honor.

09:03AM 11 THE COURT: Mr. Inciong is saying the government has
09:03AM 12 no problem.

09:03AM 13 MS. PANAGAKOS: Thank you.

09:03AM 14 MR. KENNEDY: I'll go let him know, Your Honor.

09:03AM 15 THE COURT: All right. Let's get the jury in then.

09:03AM 16 And I don't know if we have communicated this yet, but
09:03AM 17 we were able to, as I said we would try to do, secure the
09:03AM 18 presence for the balance of Phase 2 of two alternate jurors.
09:03AM 19 We went down the list, and we only had to go down the list of
09:03AM 20 two -- positions 1 and 2 to secure the two that we needed. So
09:03AM 21 the alternates that you'll see walk in in just a couple of
09:03AM 22 minutes here are Alternates 1 and 2 from Phase 1.

09:03AM 23 Alternates 3 and 4, by the way, have been instructed
09:04AM 24 with the same admonitions that we previously set in the event
09:04AM 25 that we need them. We have not discharged either one of them

09:04AM 1 yet.

09:04AM 2 MR. AKINA: Your Honor, as to the option that you gave
09:04AM 3 the government on whether to call witnesses today or
09:04AM 4 tomorrow --

09:04AM 5 THE COURT: Yes.

09:04AM 6 MR. AKINA: -- we have two witnesses planned for
09:04AM 7 today, and I expect that the estimate we gave the Court is
09:04AM 8 going to be shorter. It's possible that we could wrap it up in
09:04AM 9 less than a day. Our preference would be to wait till tomorrow
09:04AM 10 to start their direct examination. We can go forward with
09:04AM 11 openings today. We leave that up to Your Honor's discretion,
09:04AM 12 but that what we would elect to do.

09:04AM 13 THE COURT: Just openings?

09:04AM 14 MR. AKINA: I think personally it would make sense to
09:04AM 15 do it all at the same time, but I'll leave that up to Your
09:04AM 16 Honor.

09:04AM 17 THE COURT: What do you mean? You mean delay openings
09:04AM 18 till tomorrow?

09:04AM 19 MR. AKINA: Correct. And I'm not asking for that, but
09:05AM 20 I'm just --

09:05AM 21 THE COURT: So what would we accomplish today?
09:05AM 22 Nothing?

09:05AM 23 MR. AKINA: That's what we would accomplish.

09:05AM 24 THE COURT: All right. Then you don't have the
09:05AM 25 option. Those witnesses will be presented today.

09:07AM 1 (Open court in the presence of the jury.)

09:07AM 2 THE CLERK: Criminal Number 19-00099-DKW-KJM, United

09:07AM 3 States of America versus Michael J. Miske, Jr.

09:07AM 4 This case has been called for jury trial, Phase 2,

09:07AM 5 Day 104.

09:07AM 6 Counsel, please make your appearances for the record.

09:07AM 7 MR. INCIONG: Good morning, Your Honor. Mark Inciong,

09:07AM 8 KeAupuni Akina, Aislinn Affinito, and Michael Nammar for the

09:07AM 9 United States. Today we have our paralegal Collin Vickers

09:07AM 10 joining us for the first time, and FBI Special Agent Tom Palmer

09:07AM 11 is present as well. Good morning.

09:07AM 12 THE COURT: Good morning.

09:07AM 13 MR. KENNEDY: Good morning, Your Honor. Michael

09:07AM 14 Kennedy with Lynn Panagakos, Michael Miske, Ashley King, and

09:07AM 15 Josh Barry.

09:07AM 16 Good morning to each of you.

09:07AM 17 THE COURT: Good morning. You may be seated.

09:07AM 18 Good morning to our 14-member Phase 2 jury. I hope

09:07AM 19 everyone was able to get a little bit of rest over the -- what

09:07AM 20 was a three-day break from this trial at least.

09:08AM 21 The inception of Phase 2 will begin as the beginning

09:08AM 22 of Phase 1 began, which is to say the prosecution and the

09:08AM 23 defense will have an opportunity to address you first through

09:08AM 24 what is known as an opening statement.

09:08AM 25 As you now undoubtedly know, an opening statement is

09:08AM 1 an outline of what each party intends to prove and is offered
09:08AM 2 to help you follow the evidence that is to come over the next
09:08AM 3 two or three days. What counsel say to you in an opening
09:08AM 4 statement is not itself evidence. That does not mean, however,
09:08AM 5 that you should not pay careful attention to what the lawyers
09:08AM 6 say, because you should. An opening statement may help you to
09:08AM 7 better understand and follow the evidence.

09:08AM 8 And we'll start with the government.

09:09AM 9 Ms. Affinito.

09:09AM 10 MS. AFFINITO: So good morning and welcome back.

09:09AM 11 We're here to discuss the forfeiture of Michael Miske's assets
09:09AM 12 due to their nexus to his criminal racketeering enterprise.

09:09AM 13 You've already found Mr. Miske guilty of conspiring to engage
09:09AM 14 in racketeering activity. You've already determined that he
09:09AM 15 agreed to commit a multitude of racketeering acts. That is the
09:09AM 16 starting point.

09:09AM 17 So you're going to hear that under our laws there are
09:09AM 18 three buckets of property that are forfeitable. Any interests
09:09AM 19 the defendant acquired or maintained as part of a conspiracy is
09:09AM 20 forfeitable. Mr. Miske's entire interests in the enterprise,
09:10AM 21 even if you think part of that enterprise was not tainted by
09:10AM 22 racketeering activity, is forfeitable as is any of the property
09:10AM 23 that was used to promote or further the affairs of the
09:10AM 24 enterprise, and finally, any property constituting proceeds of
09:10AM 25 racketeering activity or derived from those proceeds, whether

09:10AM 1 directly or indirectly, is forfeitable. All of it.

09:10AM 2 Now, sometimes it can be tricky to disentangle what
09:10AM 3 are racketeering proceeds or what someone's interests in an
09:10AM 4 enterprise is or how to trace those proceeds back. Sometimes.

09:10AM 5 But not here. You've heard six months' worth of
09:10AM 6 evidence establishing that Michael Miske's businesses operated
09:10AM 7 to promote and further his criminal enterprise and his
09:10AM 8 racketeering activity. The Miske Enterprise encompassed his
09:10AM 9 entire family of businesses which was built upon fraud upon
09:10AM 10 fraud upon fraud, and through which he engaged in a seemingly
09:11AM 11 endless stream of racketeering activity.

09:11AM 12 Fraudulent RME licenses to get these companies up and
09:11AM 13 running, to maintain their operation, and to deceive customers
09:11AM 14 about their qualifications. Like Kama'aina Termite getting its
09:11AM 15 initial license back in 2000 by lying to the DCCA that Harry
09:11AM 16 Kansaki was going to serve as the principal RME and was a 51
09:11AM 17 percent owner. Forging signatures left and right on contracts,
09:11AM 18 on permits, on license applications, on documents to obtain
09:11AM 19 pesticides, underreporting income from Mr. Miske's businesses
09:11AM 20 on his tax returns, and then using that unreported income to
09:11AM 21 fund his extravagant lifestyle, using his house at 6 Lumahai,
09:11AM 22 which was instructed by his own companies as collateral for the
09:11AM 23 bank fraud that he committed, structuring financial
09:11AM 24 transactions for his fishing operation to avoid CTRs and the
09:11AM 25 scrutiny of law enforcement, and using Kama'aina company

09:12AM 1 employees and resources to commit obstruction of justice
09:12AM 2 against this very court.

09:12AM 3 Michael Miske's companies operated criminally to
09:12AM 4 promote and further the affairs of his racketeering enterprise,
09:12AM 5 and everything he acquired, everything his companies generated
09:12AM 6 through racketeering activity were derived from the proceeds of
09:12AM 7 it.

09:12AM 8 And on top of the evidence you've already seen and
09:12AM 9 heard, you're going to see additional evidence of how
09:12AM 10 particular assets are tied and traced back to the Miske
09:12AM 11 Enterprise. How Michael Miske acquired and maintained bank
09:12AM 12 accounts and real estate and other assets through his
09:12AM 13 racketeering activity. You'll see how he used some of the
09:12AM 14 assets themselves to promote and further the affairs of his
09:12AM 15 enterprise like his bank accounts, and you'll see additional
09:12AM 16 evidence of how he used the racketeering proceeds to purchase
09:12AM 17 assets like real estate, luxury vehicles, boats, and artwork.

09:12AM 18 You're also going to get additional jury instructions
09:13AM 19 from the Court later, but for this forfeiture phase you're
09:13AM 20 going to consider the evidence under a completely different
09:13AM 21 standard than before, and it's a much lower burden of proof.
09:13AM 22 As you'll hear, you're not being asked to decide anything
09:13AM 23 beyond a reasonable doubt. The applicable burden of proof here
09:13AM 24 is a much lower standard called preponderance of the evidence,
09:13AM 25 and it basically means more probably true than not.

09:13AM 1 So the United States is seeking to forfeit Mr. Miske's
09:13AM 2 real estate assets, boats, cars, artwork, and money from his
09:13AM 3 personal and business bank accounts. And at the end of this
09:13AM 4 much shorter trial, we will ask that you find all of these
09:13AM 5 assets forfeitable as property that Mr. Miske acquired and
09:13AM 6 maintained through racketeering activity, that was used to
09:13AM 7 promote and further the affairs of the enterprise, and that
09:13AM 8 constitutes or was derived from proceeds of his racketeering
09:14AM 9 activity. Thank you.

09:14AM 10 THE COURT: Mr. Kennedy or Ms. Panagakos for the
09:14AM 11 defense, please.

09:14AM 12 MS. PANAGAKOS: Good morning, ladies and gentlemen.
09:14AM 13 Among the instructions you'll be given is to -- that you'll be
09:14AM 14 told that the previous instructions that you were provided last
09:14AM 15 week continue to govern, and one of those instructions -- well,
09:14AM 16 those instructions concerning racketeer -- racketeering
09:14AM 17 activity continue to govern.

09:14AM 18 Like Ms. Affinito said, there are three buckets
09:14AM 19 whether an interest was acquired -- whether an asset was
09:14AM 20 acquired or maintained in violation of Count 1, whether it's
09:14AM 21 proceeds of Count 1. And the proceeds you'll see in the
09:14AM 22 special verdict form, you're going to be asked whether it's
09:14AM 23 proceeds of racketeering activity. And that's why I bring your
09:15AM 24 attention to remembering that instruction.

09:15AM 25 And then when you look at the assets, there's a number

09:15AM 1 of assets, like Ms. Affinito said, and a number of them are
09:15AM 2 tied to the four and a half million dollars that Kama'aina
09:15AM 3 Termite and Pest Control earned on the Keola La'i condominium
09:15AM 4 job.

09:15AM 5 Now, with regard to licensing, there was no evidence
09:15AM 6 presented to you as to what Mr. Harry Kansaki's ownership was
09:15AM 7 in the company in 2000. The earliest tax returns where
09:15AM 8 Mr. Miske reported a hundred percent ownership I believe were
09:15AM 9 in 2009 or 2010. Mr. Hughford Manolo said that Mr. Kansaki was
09:15AM 10 in fact the RME in the earlier years, and he was present and
09:15AM 11 supervised and worked directly with Mr. Manolo. So we don't
09:15AM 12 know. It's not accurate -- there is no evidence to support the
09:15AM 13 assertion that the license was obtained by fraud to begin with.

09:16AM 14 Now, with regard to the Nordic Construction job, at
09:16AM 15 that time Mr. Miske was the owner of Kama'aina Termite. He
09:16AM 16 reported that to the IRS, and he had his own pest control
09:16AM 17 operator's license and he was an RME of Kama'aina Termite and
09:16AM 18 Pest Control. He held himself out as the president and person
09:16AM 19 in charge of Kama'aina Termite in all his dealings with Nordic
09:16AM 20 Construction. They were never deceived about the existence of
09:16AM 21 some other person. He was the person that they thought was in
09:16AM 22 charge, and he was in fact in charge and he was licensed to be
09:16AM 23 in charge.

09:16AM 24 They were not -- if you'll recall Instruction 42,
09:16AM 25 which talks about whether or not Nordic Construction was

09:16AM 1 defrauded, which goes to whether or not its proceeds of
09:16AM 2 racketeering activity, they were never deceived about the
09:16AM 3 nature of their bargain. That was in the instruction. In
09:16AM 4 order to be wire fraud, in order to be proceeds of that
09:16AM 5 racketeering activity, Nordic Construction would've had to have
09:16AM 6 been deceived about the essential nature of the bargain. They
09:17AM 7 weren't. They bargained to -- for the service of Kama'aina
09:17AM 8 Termite, a company they knew to be managed by Mr. Miske, and
09:17AM 9 they got a successful fumigation job.

09:17AM 10 So what was purchased with money from that job that
09:17AM 11 you'll be asked to render forfeiture verdict on, one is the
09:17AM 12 Rachel, the commercial fishing boat. That boat operated
09:17AM 13 lawfully. You heard from Frank Crivello about the lawful
09:17AM 14 fishing activities that that boat derived its income from.
09:17AM 15 There was an issue as to how workers were paid, but that -- the
09:17AM 16 payment to workers is not -- those were monies out. Those
09:17AM 17 weren't proceeds in, and it didn't -- it wasn't relevant to how
09:17AM 18 the Rachel was acquired or maintained in the ownership of the
09:17AM 19 Kama'aina family of businesses. They didn't keep it free
09:18AM 20 structuring, and they didn't use proceeds of any illegal act to
09:18AM 21 keep it. They purchased it outright. Kama'aina Holdings was
09:18AM 22 the entity that purchased it outright for 900-something
09:18AM 23 thousand dollars with money from the Nordic job.

09:18AM 24 So we're asking you to find that Nordic money
09:18AM 25 untainted because that job was a success. That company got the

09:18AM 1 benefit of its bargain. They were not deceived. There was
09:18AM 2 never an intent to cheat Nordic. And that's how the Rachel was
09:18AM 3 purchased.

09:18AM 4 And then the Rachel engaged in fishing -- commercial
09:18AM 5 fishing activity for many years, and then that derived income
09:18AM 6 that was fully reported on the tax returns. And then with that
09:18AM 7 money the Boston Whaler was purchased, the Painkiller. And
09:18AM 8 that was purchased in 2016. There is no nexus between that
09:18AM 9 boat and the alleged -- and the structuring. The structuring
09:18AM 10 that was presented to you took place from 2012 to 2014. This
09:18AM 11 boat, the Painkiller, was purchased in 2016 with a down payment
09:19AM 12 from fishing revenues alone, and alone that was repaid with
09:19AM 13 fishing revenues, lawful money.

09:19AM 14 A third asset that was purchased with the Nordic
09:19AM 15 Construction money is a residence on Paokano Loop in Kailua.
09:19AM 16 That was purchased with Nordic Construction money, and then
09:19AM 17 it -- it paid for itself largely with rental income, rental
09:19AM 18 income from that property.

09:19AM 19 So that is one bucket of assets that we would ask you
09:19AM 20 to find not subject to forfeiture for those reasons, and for
09:19AM 21 additional reasons as the evidence is presented and during
09:19AM 22 closing.

09:19AM 23 There's another bucket of assets which is the bank
09:19AM 24 accounts. Those bank accounts -- there were bank accounts that
09:19AM 25 were -- funds from bank accounts were seized in July 2020. So

09:19AM 1 the money in those bank accounts were from, you know, the time
09:19AM 2 period prior to 2020. There are two Kama'aina Termite and Pest
09:19AM 3 Control accounts, there's an O'ahu Termite and Pest management
09:20AM 4 account, a plumbing account and a personal account.

09:20AM 5 So the Kama'aina Termite and Pest Control accounts
09:20AM 6 were generated -- and the revenues -- I believe the evidence is
09:20AM 7 going to show that the money in the Kama'aina Termite bank
09:20AM 8 accounts were revenues earned from fumigation and pest control
09:20AM 9 jobs, nothing else.

09:20AM 10 And at that time period Delia Fabro-Miske was the RME.
09:20AM 11 There's been no evidence that she -- that there were any false
09:20AM 12 statements made to anyone with regard to the -- her license.
09:20AM 13 The company held itself out as licensed. It was licensed with
09:20AM 14 PC0824 from the beginning to the end.

09:20AM 15 And so those revenues we'd ask you to find to be
09:20AM 16 lawfully earned, not acquired or maintained in violation of
09:20AM 17 RICO and not the proceeds of any racketeering activity.

09:20AM 18 Oahu Termite and Pest Management, that covers a time
09:20AM 19 period when Michael Worden was the RME. Now, he admits he was
09:21AM 20 the RME until -- and he moved away at a certain period of time,
09:21AM 21 and he didn't remove himself as the RME. So the time period
09:21AM 22 governing the funds in that account are when Michael Worden was
09:21AM 23 the RME. He testified he was, and whether or not he was in
09:21AM 24 compliance with the rules regarding the RME when he moved away,
09:21AM 25 there were no statements made to customers who paid O'ahu

09:21AM 1 Termite for its services with regard to that. So there was no
09:21AM 2 intent to cheat Oahu Termite and Pest Management customers.
09:21AM 3 They paid for services that were rendered, and that money is
09:21AM 4 not acquired or maintained in violation of the RICO statute,
09:21AM 5 the Count 1 -- in violation of Count 1.

09:21AM 6 And then there's Mr. Miske's personal account which
09:21AM 7 has money, that I think will be presented as a commingled
09:21AM 8 account, so there will be money that is simply untainted by any
09:21AM 9 argument. There will be money that comes from Kama'aina
09:22AM 10 Holdings, which is fishing revenues, which the fishing activity
09:22AM 11 was lawful, and then money from the Kama'aina Termite
09:22AM 12 fumigations.

09:22AM 13 One big job that relates to these -- the Kama'aina
09:22AM 14 Termite money and an asset purchased with it, one asset is the
09:22AM 15 Ferrari. The Ferrari was purchased with funds from the
09:22AM 16 Maunakea job. The Maunakea contract was signed by Delia, the
09:22AM 17 RME. The job was performed. There were issues that couldn't
09:22AM 18 be resolved because of the charges in this case, but there was
09:22AM 19 no fraud. The Maunakea -- there was no fraud, there was no
09:22AM 20 deception of Maunakea. Kama'aina Termite, a licensed company,
09:22AM 21 bid the job, got the job, performed the work to the best of its
09:22AM 22 ability, and couldn't finish with its warranty work because of
09:22AM 23 this case. But that's where the Ferrari comes from.

09:22AM 24 There are other vehicles. There's a red Volkswagen.
09:22AM 25 You saw pictures of a young Mr. Miske with his girlfriend Andi

09:22AM 1 at the time and a young Caleb. That vehicle was purchased
09:23AM 2 sometime in the '90s before any evidence of tainted funds at
09:23AM 3 all. The green Volkswagen, which was turned into a tribute
09:23AM 4 car, the 1951 green Volkswagen, and it was originally red, but,
09:23AM 5 anyway, it was purchased in 2009, again before any of the
09:23AM 6 evidence of the monies in this case.

09:23AM 7 So the collective vehicles, that was a personal hobby.
09:23AM 8 I'm not talking about the Hawaii Partners vehicles. I'm
09:23AM 9 talking about collector -- the Volkswagens, the ones you saw
09:23AM 10 pictures of, those are personal collector vehicles that were
09:23AM 11 purchased with personal funds outside of the affairs of the
09:23AM 12 RICO conspiracy.

09:23AM 13 And then there's gifts which have no connection to any
09:23AM 14 taint at all. You heard from the artist Slick as to gifts that
09:23AM 15 he supplied, and they're seeking to forfeit those as well, and
09:23AM 16 we'd ask you to, you know, find that those are not subject to
09:23AM 17 forfeiture because they're untainted gifts. And there are
09:24AM 18 other artworks which are gifts as well. Thank you.

09:24AM 19 THE COURT: The exclusionary rule continues to apply
09:24AM 20 to this Phase 2, with the exception of Mr. Hines with the
09:24AM 21 government's consent.

09:24AM 22 Is the government prepared for as its first witness?

09:24AM 23 MS. AFFINITO: Yes, Your Honor. The government calls
09:24AM 24 Crystal Young.

09:24AM 25 THE CLERK: Please raise your right hand.

09:24AM 1 CRYSTAL YOUNG,
09:24AM 2 called as a witness, having been first duly sworn, was examined
09:24AM 3 and testified as follows:
09:24AM 4 THE CLERK: Please state your name, spelling your last
09:25AM 5 name for the record.
09:25AM 6 THE WITNESS: Crystal Young, Y-O-U-N-G.
09:25AM 7 DIRECT EXAMINATION
09:25AM 8 BY MS. AFFINITO:
09:25AM 9 Q Good morning.
09:25AM 10 A Good morning.
09:25AM 11 Q Ms. Young, would you please remind the jury what you do.
09:25AM 12 A I'm a revenue agent with the Internal Revenue Service.
09:25AM 13 Q And you work out of the LA field office?
09:25AM 14 A Yes.
09:25AM 15 Q And you previously testified at trial about your review of
09:25AM 16 accounting and tax records; is that correct?
09:25AM 17 A Yes.
09:25AM 18 Q So I want to direct your attention to the work that
09:25AM 19 Kama'aina Termite did for the Keola La'i job. Are you familiar
09:25AM 20 with the payments that Kama'aina Termite received in connection
09:25AM 21 with this work?
09:25AM 22 A Yes.
09:25AM 23 Q And how were those payments received?
09:25AM 24 A A couple of the payments were directly deposited -- or put
09:25AM 25 into the bank account of Kama'aina Termite, and then three

09:25AM 1 payments were also put into the Title Guaranty escrow account.

09:26AM 2 Q Okay. And what happened to the three payments that were
09:26AM 3 put in the escrow account?

09:26AM 4 A They were eventually disbursed.

09:26AM 5 Q Okay. And I guess, was there any activity before they
09:26AM 6 were disbursed?

09:26AM 7 A Yes, they were put into an interest-bearing bank account
09:26AM 8 for the -- on behalf of Kama'aina Termite.

09:26AM 9 Q Okay. And then did you review records of the Keola La'i
09:26AM 10 escrow account, other bank account records and accounting
09:26AM 11 records, to determine where the payments were ultimately
09:26AM 12 disbursed?

09:26AM 13 A Yes.

09:26AM 14 Q And did you prepare a summary of those records focusing on
09:26AM 15 transactions that you determined to be relevant to this
09:26AM 16 forfeiture proceeding?

09:26AM 17 A Yes.

09:26AM 18 MS. AFFINITO: I'd like to show the witness only
09:26AM 19 Government's Exhibit 11-3 from the -- I believe it's the 47th
09:26AM 20 supplement.

09:26AM 21 THE COURT: Go ahead.

09:28AM 22 MS. AFFINITO: Looks like we're having a problem. We
09:28AM 23 can use the ELMO.

09:28AM 24 BY MS. AFFINITO:

09:28AM 25 Q All right. So can you see the document that I've placed

09:29AM 1 under the ELMO?

09:29AM 2 A Yes.

09:29AM 3 Q Okay. Is this a copy of the summary that you've prepared?

09:29AM 4 A Yes.

09:29AM 5 Q Okay. And does it show how payments were received from

09:29AM 6 the Keola La'i job into the escrow account?

09:29AM 7 A Yes.

09:29AM 8 Q And then does it show the accounts and destinations into

09:29AM 9 which those payments were ultimately disbursed?

09:29AM 10 A Yes.

09:29AM 11 MS. AFFINITO: Your Honor, we would move to admit and

09:29AM 12 publish Exhibit 11-3.

09:29AM 13 THE COURT: Any objection?

09:29AM 14 MS. PANAGAKOS: No objection, Your Honor.

09:29AM 15 THE COURT: 11-3 is admitted then without objection.

09:29AM 16 You may publish it.

09:29AM 17 (Exhibit 11-3 was received in evidence.)

09:29AM 18 BY MS. AFFINITO:

09:29AM 19 Q So there are a number of columns here. Could you walk the

09:29AM 20 jury through what these columns show?

09:29AM 21 A Yes. The first column is the date, and that's the date

09:29AM 22 the transaction was initiated. Payer or payee, that's either

09:29AM 23 who the money is coming from or going to. Receipts, what was

09:30AM 24 deposited into the escrow account. Disbursements, what were

09:30AM 25 paid out of the escrow account. And then the last column is

09:30AM 1 disbursement destinations, so where the money eventually

09:30AM 2 landed.

09:30AM 3 Q Okay. Now, does this show all of the transactions that

09:30AM 4 were in the escrow account?

09:30AM 5 A No.

09:30AM 6 Q Okay. And so which ones are not shown here?

09:30AM 7 A It's not showing the money that's transferred to the

09:30AM 8 interest-bearing bank account and then back. And it's not

09:30AM 9 showing a handful of transactions. There is a fee to the

09:30AM 10 escrow company, there is a payment out to Kama'aina Rolloff,

09:30AM 11 and then a payment made to a title company on behalf of

09:30AM 12 Mr. Dahl.

09:30AM 13 Q Okay. So here, the first three rows show payments into

09:30AM 14 the escrow count by Nordic PCL, correct?

09:30AM 15 A Correct.

09:30AM 16 Q So those were payments for the Keola La'i job; is that

09:31AM 17 right?

09:31AM 18 A That's right.

09:31AM 19 Q Okay. And the remaining entries here then show where

09:31AM 20 those payments from the escrow account went; is that correct?

09:31AM 21 A Correct.

09:31AM 22 Q Okay. So did some of the money from the Keola La'i job go

09:31AM 23 into Mike Miske's personal bank accounts?

09:31AM 24 A Yes.

09:31AM 25 Q And approximately how much?

09:31AM 1 A A little -- a little over 470,000.

09:31AM 2 Q Okay. And did some of the money go into various Leverage

09:31AM 3 bank accounts?

09:31AM 4 A Yes.

09:31AM 5 Q And how much?

09:31AM 6 A 1,050,000.

09:31AM 7 Q Okay. And then did some of it go into Kama'aina Termite

09:31AM 8 and Pest Control's bank accounts?

09:31AM 9 A Yes.

09:31AM 10 Q And how much was that?

09:31AM 11 A 300,000.

09:31AM 12 Q Okay. So I don't know if I'll be able to zoom in on this,

09:31AM 13 but do you see on -- here on February 24th, 2011, there's a

09:32AM 14 \$150,000 disbursement to Pacific Rim Bank, correct?

09:32AM 15 A Correct.

09:32AM 16 Q And what is that payment for?

09:32AM 17 A That's a payment on the Pacific Rim loan for the land at

09:32AM 18 6 Lumahai.

09:32AM 19 MS. AFFINITO: Okay. I'd like to now show the witness

09:32AM 20 only Exhibit 11-11 from the 47th supplement.

09:32AM 21 THE COURT: Go ahead.

09:32AM 22 BY MS. AFFINITO:

09:32AM 23 Q Can you see that?

09:32AM 24 A Yes.

09:32AM 25 Q Okay. So is this a copy of the \$150,000 check out of the

09:32AM 1 Keola La'i escrow account that was disbursed to Pacific Rim

09:32AM 2 Bank?

09:32AM 3 A Yes.

09:32AM 4 Q And this is you said in connection with a Pacific Rim Bank

09:32AM 5 loan for the land at 6 Lumahai, correct?

09:33AM 6 A Correct.

09:33AM 7 MS. AFFINITO: Your Honor, I would move to admit and

09:33AM 8 publish Exhibit 11-11. There's a certification at 11-7.

09:33AM 9 THE COURT: Any objection?

09:33AM 10 MS. PANAGAKOS: No objection.

09:33AM 11 THE COURT: 11-11 is admitted then. You may publish.

09:33AM 12 (Exhibit 11-11 was received in evidence.)

09:33AM 13 BY MS. AFFINITO:

09:33AM 14 Q So if we look, I guess, first at the top portion here,

09:33AM 15 this shows this was a loan payment by Michael Miske to Pacific

09:33AM 16 Rim Bank, correct?

09:33AM 17 A Correct.

09:33AM 18 Q And then you can see the disbursement in this check, this

09:33AM 19 is the \$150,000 check below there, correct?

09:33AM 20 A Correct.

09:33AM 21 Q Okay. And so I don't know if it's easy to see here, but

09:33AM 22 the date on this check is February 24th, 2011, correct?

09:33AM 23 A Correct.

09:33AM 24 Q And so that corresponds with -- it matches the escrow

09:33AM 25 account date, correct?

09:33AM 1 A Correct.

09:33AM 2 Q Okay. So on the check here, right below it there's a
09:33AM 3 different date, March 7th, 2011. What does that mean?

09:34AM 4 A That's the date that Pacific Rim would have processed it.
09:34AM 5 There is very effectually lag time between when a check is
09:34AM 6 written to when it finally gets cashed or processed.

09:34AM 7 MS. AFFINITO: I'd like to now show the witness only
09:34AM 8 Exhibit 11-8 from the 47th supplement.

09:34AM 9 THE COURT: Yes, go ahead.

09:34AM 10 BY MS. AFFINITO:

09:34AM 11 Q Okay. So is this a copy of a history of loan payments by
09:34AM 12 Michael Miske on the -- to Pacific Rim Bank on that loan for
09:34AM 13 the land at 6 Lumahai?

09:34AM 14 A Yes.

09:34AM 15 MS. AFFINITO: Your Honor, I would move to admit and
09:34AM 16 publish Exhibit 11-8. There's a certification at 11-7.

09:34AM 17 THE COURT: Any objection?

09:34AM 18 MS. PANAGAKOS: No objection.

09:35AM 19 THE COURT: 11-8 is admitted then. You may publish.

09:35AM 20 (Exhibit 11-8 was received in evidence.)

09:35AM 21 Q So if we first look at the top portion here, so this
09:35AM 22 identifies Michael J. Miske, Jr., correct?

09:35AM 23 A Correct.

09:35AM 24 Q And this document, it says it's a loan history record,
09:35AM 25 correct?

09:35AM 1 A Correct.

09:35AM 2 Q Related to Pacific Rim Bank?

09:35AM 3 A Correct.

09:35AM 4 Q And this loan, it says it's for a first mortgage, vacant

09:35AM 5 land at 6 Lumahai Street; is that correct?

09:35AM 6 A Correct.

09:35AM 7 Q Okay. And then if we look at the bottom here, is this

09:35AM 8 dated March 7th, and there's an amount here \$150,000, does this

09:35AM 9 correspond to the \$150,000 payment out of the Keola La'i escrow

09:35AM 10 account?

09:35AM 11 A Yes.

09:35AM 12 Q Okay. And so here they're using the processing date as

09:36AM 13 opposed to the initiation date, correct?

09:36AM 14 A Correct.

09:36AM 15 Q Okay. So this \$150,000 payment on the loan for the land

09:36AM 16 at 6 Lumahai was ultimately sourced from Kama'aina Termite and

09:36AM 17 Pest Control, correct?

09:36AM 18 A Correct.

09:36AM 19 Q Okay. So it was -- specifically, it came from money that

09:36AM 20 Kama'aina Termite received for the Keola La'i job, correct?

09:36AM 21 A Correct.

09:36AM 22 Q Okay. And based on your review of the loan documents and

09:36AM 23 accounting and tax records, did Mr. Miske identify any uses for

09:36AM 24 the 6 Lumahai land aside from building the property on it?

09:36AM 25 A Yes. In the mun (sic) documents it stated that he would

09:36AM 1 be using it for rental storage of equipment, specifically for

09:36AM 2 Kama'aina Plumbing and Kama'aina Termite.

09:36AM 3 Q Okay. And I can show you again --

09:36AM 4 MS. AFFINITO: Publish Exhibit 11-3, which is already

09:37AM 5 admitted.

09:37AM 6 THE COURT: Yes.

09:37AM 7 BY MS. AFFINITO:

09:37AM 8 Q So this is that summary we were just looking at that you

09:37AM 9 made. So you testified earlier that over a million dollars of

09:37AM 10 the money that you earned from the Keola La'i job went to the

09:37AM 11 Leverage accounts; is that correct?

09:37AM 12 A That's correct.

09:37AM 13 Q And so the first payment here into a Leverage account is

09:37AM 14 this on February 28th, 2011, correct?

09:37AM 15 A Correct.

09:37AM 16 Q It goes to Leverage Entertainment LLC, correct?

09:37AM 17 A Correct.

09:37AM 18 Q And it's for \$350,000, correct?

09:37AM 19 A Correct.

09:37AM 20 Q And then between October and December of 2011, an

09:37AM 21 additional \$700,000 of the Keola La'i money gets disbursed to

09:37AM 22 Leverage accounts; is that correct?

09:37AM 23 A Correct.

09:37AM 24 Q And do you know what that money was for?

09:37AM 25 A That was the first year of Leverage, it's to operate and

09:38AM 1 start the business.

09:38AM 2 Q Okay. So this money is going into Leverage around the
09:38AM 3 time that it's starting up; is that correct?

09:38AM 4 A Correct.

09:38AM 5 Q Okay. And 2011 was the Leverage's first year of
09:38AM 6 operation. Is that what you were testifying to?

09:38AM 7 A Yes, that's correct.

09:38AM 8 Q Okay. And so were these -- these were contributions to
09:38AM 9 Leverage; is that right?

09:38AM 10 A That's right.

09:38AM 11 Q And if we look here on September 27th, 2011, there is a
09:38AM 12 \$556,252.87 disbursement to Title Guaranty Escrow Services; is
09:38AM 13 that right?

09:38AM 14 A Yes.

09:38AM 15 Q So is this the same escrow company who's holding the
09:38AM 16 entire escrow account?

09:38AM 17 A Same company, yes.

09:38AM 18 Q Okay. This disbursement goes to the escrow company,
09:38AM 19 correct?

09:38AM 20 A Yes.

09:38AM 21 Q Okay. So did it actually go to a different office within
09:39AM 22 the escrow company?

09:39AM 23 A Yes.

09:39AM 24 Q Okay. And did you review records to determine what that
09:39AM 25 disbursement was used for?

09:39AM 1 A Yes.

09:39AM 2 Q And what was it used for?

09:39AM 3 A It was the purchase of Paokano Loop property.

09:39AM 4 MS. AFFINITO: If I could show the witness only

09:39AM 5 Exhibit 11-20 from the 47th supplement.

09:39AM 6 THE COURT: Yes, go ahead.

09:39AM 7 BY MS. AFFINITO:

09:39AM 8 Q So can you see this document before you?

09:39AM 9 A Yes.

09:39AM 10 Q Okay. So is this a copy of the final buyer statement for
09:39AM 11 a property purchased by Michael Miske at 614 Paokano Loop?

09:39AM 12 A Yes.

09:39AM 13 Q And does this show a roughly \$556,000 disbursement from
09:39AM 14 that Keola La'i escrow account?

09:39AM 15 A Yes.

09:39AM 16 MS. AFFINITO: Your Honor, I'd move to admit and
09:40AM 17 publish Exhibit 11-20. There's a certification at 11-16.

09:40AM 18 THE COURT: Any objection to 11-20?

09:40AM 19 MS. PANAGAKOS: No objection, Your Honor.

09:40AM 20 THE COURT: That exhibit is then admitted without
09:40AM 21 objection. You may publish it.

09:40AM 22 (Exhibit 11-20 was received in evidence.)

09:40AM 23 BY MS. AFFINITO:

09:40AM 24 Q So if we zoom in here and look at the top. So this is --
09:40AM 25 this is the final buyer's statements for the property at 614

09:40AM 1 Paokano Loop in Kailua, Hawaii; is that right?

09:40AM 2 A Yes.

09:40AM 3 Q And it identifies Michael Miske on this document, correct?

09:40AM 4 A Correct.

09:40AM 5 Q And then again, that same Title Guaranty Escrow Services

09:40AM 6 company, correct?

09:40AM 7 A Correct.

09:40AM 8 Q And if we look a little further down, do you see the

09:40AM 9 deposit of \$556,252.87?

09:41AM 10 A Yes.

09:41AM 11 Q And so that's the exact same amount down to the cent that

09:41AM 12 was disbursed from the Keola La'i escrow account, correct?

09:41AM 13 A Correct.

09:41AM 14 Q And then we see that here, and you see that number down

09:41AM 15 here again as well.

09:41AM 16 A Correct.

09:41AM 17 Q Okay. And here it says "TGES Main Office." Is that the

09:41AM 18 escrow company?

09:41AM 19 A Yes.

09:41AM 20 Q Okay. And so it has this roughly \$556,000 payment, again

09:41AM 21 dated September 27th, 2011; is that right?

09:41AM 22 A That's right.

09:41AM 23 Q And so that's the same date that's identified on the

09:41AM 24 escrow account; is that right?

09:41AM 25 A Correct.

09:41AM 1 Q Okay. So the payment for the purchase of the Paokano Loop
09:41AM 2 property was ultimately sourced from monies that Kama'aina
09:41AM 3 Termite received; is that right?

09:41AM 4 A Correct.

09:41AM 5 Q And specifically, this money came from money that
09:41AM 6 Kama'aina Termite received for the Keola job -- Keola La'i job;
09:41AM 7 is that correct?

09:41AM 8 A That's correct.

09:42AM 9 MS. AFFINITO: Nothing further.

09:42AM 10 THE COURT: Ms. Panagakos.

09:42AM 11 MS. PANAGAKOS: No, Judge.

09:42AM 12 THE COURT: All right. Ms. Young, you may step down
09:42AM 13 subject to cross-examination at a later date.

09:42AM 14 THE WITNESS: Thank you.

09:42AM 15 THE COURT: Next witness.

09:42AM 16 MR. AKINA: The government calls Greg Turner.

09:43AM 17 THE CLERK: Please raise your right hand.

09:43AM 18 GREGORY TURNER,
09:43AM 19 called as a witness, having been first duly sworn, was examined
09:43AM 20 and testified as follows:

09:43AM 21 THE CLERK: Please state your full name, spelling your
09:43AM 22 last name for the record.

09:43AM 23 THE WITNESS: My name is Gregory Turner, T-U-R-N-E-R.

24

25

09:43AM 1 DIRECT EXAMINATION

09:43AM 2 BY MR. AKINA:

09:43AM 3 Q Good morning, Agent Turner.

09:43AM 4 A Good morning.

09:43AM 5 Q Welcome back.

09:43AM 6 Remind the jury, how long have you been with the FBI?

09:43AM 7 A I joined the FBI in July of 2010, graduated the academy
09:43AM 8 in -- I'm sorry, it's coming up on ten years. That's where the
09:43AM 9 ten years came from. So, yeah, I joined the bureau in July of
09:43AM 10 2014, I graduated the academy, and got up here to Honolulu in
09:43AM 11 December of 2014.

09:43AM 12 Q And what do you do for the FBI?

09:43AM 13 A I am a special agent assigned to the white collar crime
09:43AM 14 squad. We investigate financial crimes, public corruption, and
09:43AM 15 then also the evidence response team, senior team leader.

09:44AM 16 Q And in this case did you assist in the seizure of certain
09:44AM 17 properties related to Michael Miske?

09:44AM 18 A I did.

09:44AM 19 Q And around what year did most of those -- or did those
09:44AM 20 seizures take place?

09:44AM 21 A July of 2020.

09:44AM 22 Q Did you also look at financial documents related to some
09:44AM 23 of those properties?

09:44AM 24 A I did.

09:44AM 25 Q I want to ask you some questions about 6 Lumahai.

09:44AM 1 MR. AKINA: If we could pull up Exhibit 9-1374,

09:44AM 2 already in evidence in the government's 40th list.

09:44AM 3 THE COURT: Go ahead.

09:44AM 4 BY MR. AKINA:

09:44AM 5 Q Going to page 2. And if we focus on just the top portion

09:45AM 6 of the document. You see here this is a loan amount for

09:45AM 7 6 Lumahai Street?

09:45AM 8 A That's correct.

09:45AM 9 Q And what's the amount?

09:45AM 10 A 1,175,000.

09:45AM 11 Q And what was this for?

09:45AM 12 A This was a loan that was applied for and granted in 2010

09:45AM 13 to help purchase what was then a vacant lot at 6 Lumahai.

09:45AM 14 Q So this was an additional funding source to purchase that

09:45AM 15 land?

09:45AM 16 A That's correct.

09:45AM 17 Q And if we zoom out of here, let me just focus on the

09:45AM 18 primary applicant. Who's -- above, yeah, who's listed there?

09:45AM 19 A Michael Miske.

09:45AM 20 MR. AKINA: We can take this down.

09:45AM 21 BY MR. AKINA:

09:45AM 22 Q Did you look at mortgage payments made on this loan for

09:45AM 23 6 Lumahai?

09:46AM 24 A I did.

09:46AM 25 Q And where did those payments come from, the money for

09:46AM 1 those payments?

09:46AM 2 A The source of the payments for both the principal and
09:46AM 3 interest came from Kama'aina Termite and Pest Control, and then
09:46AM 4 earlier on there was some interest-only payments that came out
09:46AM 5 of Mr. Miske's personal bank account.

09:46AM 6 Q Did you create a summary of those mortgage payments --

09:46AM 7 A I did.

09:46AM 8 Q -- from 2010 to 2018?

09:46AM 9 A Sorry. Yes, I did.

09:46AM 10 MR. AKINA: And if we could show the witness
09:46AM 11 Exhibit 11-6 from the 47th supplemental list.

09:46AM 12 THE COURT: Yes, go ahead.

09:46AM 13 BY MR. AKINA:

09:46AM 14 Q And is this that summary that you generated?

09:46AM 15 A It is.

09:46AM 16 Q And what does it show?

09:46AM 17 A It shows -- yeah, payments that were made on that loan
09:46AM 18 over the -- over the life of the loan.

09:46AM 19 Q It shows the accounts it came from and the amounts as
09:46AM 20 well?

09:46AM 21 A Yeah, correct. It's an Excel spreadsheet, and, yeah, you
09:47AM 22 have the actual bank account with the last three digits of the
09:47AM 23 bank account number, and then the owner, whether that's
09:47AM 24 Kama'aina Termite or Mr. Miske's personal account.

09:47AM 25 MR. AKINA: I offer Exhibit 11-6 into evidence.

09:47AM 1 THE COURT: Any objection?

09:47AM 2 MR. KENNEDY: No objection.

09:47AM 3 THE COURT: 11-6 is admitted then. You may publish.

09:47AM 4 (Exhibit 11-6 was received in evidence.)

09:47AM 5 MR. AKINA: If we could focus on the top, the heading

09:47AM 6 of the column headers.

09:47AM 7 BY MR. AKINA:

09:47AM 8 Q If you could just walk the jury through what this means.

09:47AM 9 A Yeah, so starting on the left, the account, that's going

09:47AM 10 to be the source bank account. So for example, FHB, First

09:47AM 11 Hawaiian Bank, the bank account ending in 379 or 376. The

09:47AM 12 owner of the account is either going to be Kama'aina Termite or

09:47AM 13 Mike Miske personal, so MM personal. The date can be the date

09:47AM 14 of the payment. The description from the banking records.

09:48AM 15 Check -- check Number/ACH, so some of the payments were checks,

09:48AM 16 some of them were electronic payments, which is what ACH is,

09:48AM 17 and then the payment amount.

09:48AM 18 MR. AKINA: If we can zoom out of this.

09:48AM 19 BY MR. AKINA:

09:48AM 20 Q And so staying on this page 1, looking at the Payment

09:48AM 21 column on the far right, that's roughly \$12,000 payments

09:48AM 22 followed by five or -- four to \$6,000 payments, are those the

09:48AM 23 principal and interest payments you were talking about earlier?

09:48AM 24 A Yes.

09:48AM 25 Q And looking on the second column from the left, are those

09:48AM 1 payments coming out of Kama'aina Termite and Pest Control

09:48AM 2 accounts as well as Michael Miske's personal accounts?

09:48AM 3 A Yes.

09:48AM 4 Q And which one was paying for which?

09:48AM 5 A Early on the Mike Miske personal accounts were basically

09:48AM 6 covering the interest only, and the principal payments were the

09:49AM 7 Kama'aina Termite payments.

09:49AM 8 Q If we go to page 3 of the document, does that change as

09:49AM 9 far as money coming out of Michael Miske's personal account?

09:49AM 10 A Yes. So, you know, at some point, approximately June of

09:49AM 11 2013, the payments out of Mr. Miske's personal account stopped,

09:49AM 12 and the remaining payments for the life of the loan come out of

09:49AM 13 the Kama'aina Termite account.

09:49AM 14 Q If we go to page 7, which should be the last page. You

09:49AM 15 said this goes up to 2018. Here we see First Foundation

09:49AM 16 instead of Pacific Rim Bank. Does that mean that the -- the

09:49AM 17 loan -- whoever held the loan changed?

09:49AM 18 A Yes, correct. So First Foundation bought out Pacific Rim

09:49AM 19 in 2015. So the same loan but the payee changed obviously at

09:50AM 20 that time.

09:50AM 21 Q And so monthly, approximately how much in payments was

09:50AM 22 Kama'aina -- was coming out of the Kama'aina Termite and Pest

09:50AM 23 Control accounts?

09:50AM 24 A Towards the end, you know, on this last page,

09:50AM 25 September 17th through March of '18, approximately -- not

09:50AM 1 approximately -- exactly \$15,000.

09:50AM 2 MR. AKINA: If we could show the witness Exhibit 11-9
09:50AM 3 from the 47th list.

09:50AM 4 THE COURT: Go ahead.

09:50AM 5 BY MR. AKINA:

09:50AM 6 Q Is this an example of a check face of one of those
09:50AM 7 payments that were being made -- or two of those payments that
09:50AM 8 were being made over time?

09:50AM 9 A Yes, one of them.

09:50AM 10 Q If we could go to the second page to the second example.

09:50AM 11 A Yeah, correct. Yes.

09:50AM 12 MR. AKINA: I would offer Exhibit 11-9 into evidence.
09:50AM 13 The certification is at 11-7.

09:50AM 14 THE COURT: Any objection?

09:50AM 15 MR. KENNEDY: No objection.

09:50AM 16 THE COURT: 11-9 is admitted. You may publish.

09:51AM 17 (Exhibit 11-9 was received in evidence.)

09:51AM 18 Q Let me focus on the bottom -- third from the bottom --
09:51AM 19 third to the bottom, sorry, that check.

09:51AM 20 So just by way of example, is this a check from
09:51AM 21 Kama'aina Termite and Pest Control to Pacific Rim Bank?

09:51AM 22 A Yes.

09:51AM 23 Q And it's in the amount of \$12,000?

09:51AM 24 A Yes.

09:51AM 25 Q And then looking in the memo line, what is written there?

09:51AM 1 A "Lease 6 Lumahai."

09:51AM 2 Q Are you aware that there was also supposed to be a lease
09:51AM 3 arrangement where the land was being leased to Kama'aina
09:51AM 4 Termite and Pest Control for storage?

09:51AM 5 A Yes.

09:51AM 6 Q And does this correspond to a line item on the chart that
09:51AM 7 you created?

09:51AM 8 A This check payment does, yes.

09:51AM 9 MR. AKINA: Now, we can take this exhibit down.

09:51AM 10 BY MR. AKINA:

09:51AM 11 Q So based on your review of records, was 6 Lumahai obtained
09:52AM 12 and acquired through using proceeds from Kama'aina Termite and
09:52AM 13 Pest Control?

09:52AM 14 A The loan that was used to partially -- or, yeah, the loan
09:52AM 15 was used to partially acquire the property and, yes, Kama'aina
09:52AM 16 money and Mike Miske's personal account paid down that loan
09:52AM 17 over time.

09:52AM 18 Q I'm going to ask you about 559 Kumukahi Place. What type
09:52AM 19 of building is that?

09:52AM 20 A It's a residence in Hawaii Kai.

09:52AM 21 Q And was that property sold in the amount of \$611,123.60
09:52AM 22 approximately?

09:52AM 23 A Yes, that was the net proceeds after the accompanying
09:52AM 24 mortgage was paid off, but -- yeah.

09:52AM 25 Q And who owned that property prior to the sale?

09:53AM 1 A Michael Miske.

09:53AM 2 Q And do you remember approximately when he acquired that
09:53AM 3 property?

09:53AM 4 A It was at the very end of 2019.

09:53AM 5 Q And to acquire that property initially, were any
09:53AM 6 associates of Michael Miske's used?

09:53AM 7 A Yes.

09:53AM 8 Q Who?

09:53AM 9 A Kaulana Freitas.

09:53AM 10 Q And how was he used?

09:53AM 11 A The -- the home was purchased at a foreclosure auction,
09:53AM 12 and Kaulana Freitas used money from Mike Miske's accounts to
09:53AM 13 actually go to the auction and bid on the house.

09:53AM 14 MR. AKINA: If we could show the witness only
09:53AM 15 Exhibit 11-25 from the 47th list.

09:53AM 16 THE COURT: Go ahead.

09:53AM 17 BY MR. AKINA:

09:53AM 18 Q What is this document we are looking at?

09:53AM 19 A It's a letter from Kaulana Freitas just acknowledging his
09:54AM 20 role in initially, you know, acting as the buyer for Mr. Miske.

09:54AM 21 Q And is it signed by Michael Miske?

09:54AM 22 A It is.

09:54AM 23 Q And is it signed by Kaulana Freitas?

09:54AM 24 A It is.

09:54AM 25 MR. AKINA: I would offer 11-25 into evidence. There

09:54AM 1 is a certification at 11-21.

09:54AM 2 THE COURT: Any objection?

09:54AM 3 MR. KENNEDY: No objection.

09:54AM 4 THE COURT: 11-25 is admitted. You may publish.

09:54AM 5 (Exhibit 11-25 was received in evidence.)

09:54AM 6 Q And the very top, you see this is on Kama'aina Termite and
09:54AM 7 Pest Control letterhead?

09:54AM 8 A Yes.

09:54AM 9 Q And if we focus on the first paragraph, is this what
09:54AM 10 you're describing about Kaulana Freitas being the bidder at the
09:54AM 11 auction?

09:54AM 12 A Yes.

09:54AM 13 Q And then if we go to the second paragraph. Is this an
09:55AM 14 explanation that Kaulana Freitas is then designating Michael
09:55AM 15 Miske to be the buyer of the property?

09:55AM 16 A Yes.

09:55AM 17 Q And was -- were payments -- did payments go through
09:55AM 18 Kaulana Freitas for this property as well?

09:55AM 19 A Yes. So Mr. Miske had four cashier's checks withdrawn
09:55AM 20 from his account, and those cashier's checks were given to
09:55AM 21 Kaulana Freitas. They were written out to him actually, to
09:55AM 22 Kaulana Freitas, again for the purpose of going to the auction
09:55AM 23 and bidding on the house.

09:55AM 24 Q And was that money ultimately applied to the purchase of
09:55AM 25 the home?

09:55AM 1 A It was.

09:55AM 2 Q About how much was that in total?

09:55AM 3 A 140,000.

09:55AM 4 Q Did money go through any other associates of Michael

09:56AM 5 Miske's?

09:56AM 6 A Yes.

09:56AM 7 Q Who?

09:56AM 8 A So basically three buckets of money that were used to

09:56AM 9 purchase Kumukahi. One was the cashier's checks from Kaulana

09:56AM 10 Freitas for \$140,000. There was an additional \$250,000 down

09:56AM 11 payment that came from a checking account, and the signatory on

09:56AM 12 that was Delia Fabro-Miske, and it was a joint account with her

09:56AM 13 and a minor child.

09:56AM 14 Q And were you able to trace money going from both Kaulana

09:56AM 15 Freitas's account and Delia Fabro-Miske's accounts back to

09:56AM 16 Michael Miske's personal account?

09:56AM 17 A The cashier's checks used by Kaulana Freitas and the money

09:56AM 18 from the joint account of Delia Fabro-Miske and her minor

09:56AM 19 child, yes, were traced into the escrow account to buy the

09:56AM 20 house.

09:56AM 21 Q And did those monies go out at different points in time

09:56AM 22 from his accounts?

09:56AM 23 A Yes.

09:57AM 24 Q About how much time elapsed?

09:57AM 25 A Approximately a year.

09:57AM 1 Q Which one went out first?

09:57AM 2 A So the checks came out, you know, at the foreclosure
09:57AM 3 auction, and because it was a foreclosure, I think the escrow,
09:57AM 4 the closing of the property took a lot longer than a normal
09:57AM 5 closing. So, yeah, the checks happened, and then maybe a year
09:57AM 6 later the \$250,000 came into the escrow account.

09:57AM 7 Q So the checks from Kaulana Freitas, those came out first?

09:57AM 8 A Yes.

09:57AM 9 Q And for those checks, were you able to trace where that
09:57AM 10 came from from Mr. Miske's account?

09:57AM 11 A Yes.

09:57AM 12 Q Where did that come from?

09:57AM 13 A So that was sourced from -- okay, in 2018, Mr. Miske got a
09:57AM 14 refinanced loan from Bank of Hawaii and took some cash out from
09:57AM 15 that refinance loan. And so the -- some of the funds that were
09:58AM 16 used from that refinanced loan were used to get the cashier's
09:58AM 17 checks that Kaulana Freitas used to buy the house.

09:58AM 18 Q So proceeds from the Bank of Hawaii loan at 6 Lumahai,
09:58AM 19 where 6 Lumahai was the collateral, those proceeds were used in
09:58AM 20 part to purchase Kumukahi Place?

09:58AM 21 A That's correct.

09:58AM 22 Q Did you --

09:58AM 23 MR. AKINA: Can we show the witness Exhibit 11-22 from
09:58AM 24 the 47th list?

09:58AM 25 THE COURT: Go ahead.

09:58AM 1 BY MR. AKINA:

09:58AM 2 Q And what is this document?

09:58AM 3 A This is a settlement statement. So, yeah, when the house
09:58AM 4 closed, it's just kind of an accounting basically of the money
09:58AM 5 in and out, and who owes what to document the purchase of the
09:58AM 6 property.

09:58AM 7 Q Does it also document those deposits -- those payments
09:58AM 8 that you just described?

09:58AM 9 A It does.

09:58AM 10 MR. AKINA: I'd offer Exhibit 11-22 into evidence.
09:59AM 11 There's a certification at 11-21.

09:59AM 12 THE COURT: Any objection to 11-22?

09:59AM 13 MR. KENNEDY: No objection.

09:59AM 14 THE COURT: That exhibit then is admitted. You may
09:59AM 15 publish it.

09:59AM 16 (Exhibit 11-22 was received in evidence.)

09:59AM 17 Q If we could focus on the third box from the top. So this
09:59AM 18 is the settlement statement for that Kumukahi Place; is that
09:59AM 19 correct?

09:59AM 20 A Yes.

09:59AM 21 Q And who's listed as the buyer on this?

09:59AM 22 A Michael John Miske, Jr., and Delia Miske.

09:59AM 23 Q And you said it was purchased around towards the end of
09:59AM 24 2019, December 31st, 2019, to be exact?

09:59AM 25 A Yes.

09:59AM 1 Q If we can zoom out of this.

09:59AM 2 If we focus on the first portion of that last box

09:59AM 3 under "Financial." It shows the sale price was 1.4 million for

10:00AM 4 the home?

10:00AM 5 A That's correct.

10:00AM 6 Q And then there are two deposits here. Are these the two

10:00AM 7 deposits you were talking about?

10:00AM 8 A Yes.

10:00AM 9 Q Okay. So the \$140,000 that came through the Law Office of

10:00AM 10 James Dandar, was that the Kaulana Freitas checks?

10:00AM 11 A Yes.

10:00AM 12 Q And the 250,000 you talked about, it says Michael Miske

10:00AM 13 here, but it came through Delia Fabro-Miske's account?

10:00AM 14 A That's correct.

10:00AM 15 Q Were you able to sort of chart out the different accounts

10:00AM 16 and the flow of the funds?

10:00AM 17 A I was.

10:00AM 18 MR. AKINA: If we could show the witness Exhibit 11-34

10:00AM 19 from the 47th list.

10:00AM 20 THE COURT: Go ahead.

10:00AM 21 BY MR. AKINA:

10:00AM 22 Q Is this that chart, the flow of the funds that you

10:00AM 23 created?

10:00AM 24 A It is.

10:00AM 25 MR. AKINA: I'd offer Exhibit 11-34 into evidence.

10:00AM 1 THE COURT: Any objection?

10:01AM 2 MR. KENNEDY: No objection.

10:01AM 3 THE COURT: 11-34 is admitted. You may publish it.

10:01AM 4 (Exhibit 11-34 was received in evidence.)

10:01AM 5 Q Okay. So the -- you said there were three buckets of

10:01AM 6 payments, is that -- that's depicted here?

10:01AM 7 A Yes.

10:01AM 8 Q Under the Escrow column, the \$140,000, \$250,000, and over

10:01AM 9 1 million?

10:01AM 10 A Right.

10:01AM 11 Q So this top row that starts on the left, "From BOH refi 6

10:01AM 12 Lumahai," which -- which person did these go through?

10:01AM 13 A So, yeah, looking at the right column, right, so the

10:01AM 14 \$140,000 was sourced left to right. So the top chunk of money

10:01AM 15 is the chunk of money that Kaulana Freitas was involved in.

10:01AM 16 Q And so just working through, can you explain to the jury

10:01AM 17 the path that the money took?

10:01AM 18 A Yeah, so if you start in the top left, you have the Bank

10:02AM 19 of Hawaii refinance loan. Some of those proceeds went into --

10:02AM 20 I'm sorry, all of those proceeds went into Mr. Miske's Bank of

10:02AM 21 Hawaii account ending in 729, and then some of those proceeds

10:02AM 22 were used to purchase the cashier's checks that totaled

10:02AM 23 \$140,000 that were written out to Kaulana Freitas.

10:02AM 24 And then Kaulana Freitas goes to the foreclosure

10:02AM 25 auction and has to put 10 percent down, right. 10 percent of

10:02AM 1 1.4 million is 140,000, and so that's the first -- that top
10:02AM 2 row.
10:02AM 3 MR. AKINA: And if we can show Exhibit 11-19 to the
10:02AM 4 witness.
10:02AM 5 THE COURT: Yes, go ahead.
10:02AM 6 BY MR. AKINA:
10:02AM 7 Q What are we looking at here?
10:02AM 8 A So this is a -- kind of a subset or a portion of a
10:03AM 9 previous exhibit, but, yeah, it's -- it shows the Bank of
10:03AM 10 Hawaii refinance loan money coming into Mr. Miske's personal
10:03AM 11 account, and then the disbursements that were made subsequent
10:03AM 12 to that.
10:03AM 13 Q So this would show the money coming in, and then also the
10:03AM 14 money going out from that chart?
10:03AM 15 A Yes.
10:03AM 16 Q And is this a summary of the underlying documents --
10:03AM 17 A It is.
10:03AM 18 Q -- for that loan?
10:03AM 19 A It is.
10:03AM 20 MR. AKINA: I would offer Exhibit 11-19 into evidence.
10:03AM 21 THE COURT: Any objection to 11-19?
10:03AM 22 MR. KENNEDY: Your Honor, no objection, but the -- I
10:03AM 23 would ask that the last entry that's not paged, the last entry
10:03AM 24 on the last page just be blackened out.
10:03AM 25 THE COURT: Any objection to that?

10:04AM 1 MR. AKINA: No objection to that.

10:04AM 2 THE COURT: This is one of the entries dated

10:04AM 3 July 24th, 2018?

10:04AM 4 MR. AKINA: I believe it's a July 26, 2018 entry.

10:04AM 5 THE COURT: I see. I was missing one page.

10:04AM 6 All right. Without objection then, 11-19 is admitted

10:04AM 7 with the caveat that the final entry -- I was looking for a

10:04AM 8 page number. It doesn't look like this document has page

10:04AM 9 numbers, but the final entry dated July 26, 2018, will be

10:04AM 10 admitted -- will be deleted -- excuse me -- redacted before it

10:04AM 11 goes back to the jury.

10:04AM 12 (Exhibit 11-19 was received in evidence.)

10:04AM 13 MR. KENNEDY: And, Your Honor, since I'm looking at it

10:04AM 14 on my computer, it looks like it totals 15 pages in total.

10:05AM 15 THE COURT: Okay, thank you.

10:05AM 16 MR. KENNEDY: You're welcome.

10:05AM 17 THE COURT: It appears on the final page.

10:05AM 18 MR. AKINA: Permission to publish?

10:05AM 19 THE COURT: Yes.

10:05AM 20 BY MR. AKINA:

10:05AM 21 Q Okay. So this is a summary of Michael Miske's personal

10:05AM 22 accounts at the time?

10:05AM 23 A That's correct.

10:05AM 24 Q And if we focus on the top left corner with the gray

10:05AM 25 boxes, and this was at which bank?

10:05AM 1 A Bank of Hawaii.

10:05AM 2 Q And if we go -- zoom out of this.

10:05AM 3 On the far right column, what is that? If we zoom on
10:05AM 4 that header beginning "Non-loan funds."

10:05AM 5 A Right, so Mr. Miske had some money in his bank account

10:05AM 6 prior to the loan proceeds coming in. So prior to the loan

10:06AM 7 proceeds, he had \$231,278.89 in that account. So this heading

10:06AM 8 in this column shows the money that was in the account, yeah,

10:06AM 9 prior to those loan proceeds coming in.

10:06AM 10 MR. AKINA: And so if we zoom out of here, if we focus

10:06AM 11 on the balance and just the first row underneath balance in the

10:06AM 12 middle of the page. Just the first two rows.

10:06AM 13 BY MR. AKINA:

10:06AM 14 Q Okay. This is what you're talking about, how it starts at

10:06AM 15 \$231,000 approximately?

10:06AM 16 A Correct.

10:06AM 17 Q And then the next number, this is the balance,

10:06AM 18 2.1 million; is that correct?

10:06AM 19 A Right, yeah, that's essentially the balance before the

10:06AM 20 loan proceeds come in, the loan proceeds come in, and then your

10:06AM 21 new balance in that bank account is 2.1 million roughly.

10:07AM 22 Q Okay. If we zoom out, that highlighted box with

10:07AM 23 1.9 million, that's the loan proceeds, right?

10:07AM 24 A Right.

10:07AM 25 Q That's the refi on -- the refinance on the 6 Lumahai home?

10:07AM 1 A Yes.

10:07AM 2 Q And so this column on the far right, is this just a
10:07AM 3 running tally of how the pre- -- the money that was in the
10:07AM 4 account before the loan hit the account, did you just kind of
10:07AM 5 keep an eye on that to assume that that money would be used
10:07AM 6 first?

10:07AM 7 A Yeah, so those right two columns are -- yeah, basically
10:07AM 8 the beginning funds in that account, and then you'll see the
10:07AM 9 loan funds. And so as you work down the page, the transactions
10:07AM 10 happen, the money that was in the account, I subtracted it
10:07AM 11 first, and, you know, after you hit, let's say, 231,000 and
10:08AM 12 expenditures, you get into the loan money.

10:08AM 13 So, yeah, the two right columns just track that, you
10:08AM 14 know, is it the beginning money or is it the money that came in
10:08AM 15 with the loan proceeds.

10:08AM 16 Q And so this is a way for you to keep track of whether
10:08AM 17 those four checks going to Kaulana Freitas were actually coming
10:08AM 18 from the loan proceeds?

10:08AM 19 A Yes.

10:08AM 20 Q If we go to the second page. You highlighted some of the
10:08AM 21 cells. Is that where -- does that signify where the
10:08AM 22 preexisting money was used up, and then now you're switching
10:08AM 23 over to the loan proceeds that are being used?

10:08AM 24 A That's correct, yes. And that's shown in the two -- in
10:08AM 25 the two right-hand columns as well.

10:08AM 1 MR. AKINA: If we go to page 8. And focusing on these
10:08AM 2 top six withdrawals going down to -- from May 16, 2018, just
10:09AM 3 going the first four, five columns -- first five columns. Just
10:09AM 4 the first five columns.
10:09AM 5 BY MR. AKINA:
10:09AM 6 Q So May 16, 2018, there are a number of checks going out,
10:09AM 7 and here we see four check numbers; is that correct?
10:09AM 8 A Yes.
10:09AM 9 Q And the amounts for those four check numbers, 20,000,
10:09AM 10 50,000, 50,000, and 20,000; is that correct?
10:09AM 11 A Yes.
10:09AM 12 Q That's -- is that the \$140,000 worth of checks going out
10:09AM 13 to Kaulana Freitas?
10:09AM 14 A Right.
10:09AM 15 MR. AKINA: And if we zoom out of here, and zoom to
10:10AM 16 the next five columns for that same period, to the right.
10:10AM 17 BY MR. AKINA:
10:10AM 18 Q And here it shows that they were checks made out for
10:10AM 19 Kaulana Freitas?
10:10AM 20 A Correct.
10:10AM 21 MR. AKINA: If we could show the witness Exhibit 11-28
10:10AM 22 from the 47th list.
10:10AM 23 THE COURT: Go ahead.
10:10AM 24 MR. AKINA: And if we just scroll through.
10:10AM 25 BY MR. AKINA:

10:10AM 1 Q And as we're scrolling through, can you tell us what these
10:10AM 2 are?

10:10AM 3 A Yes, so these are -- once the checks were deposited, this
10:10AM 4 is what this is. So some of the copies of the checks after
10:11AM 5 they had been transacted, and then some related financial
10:11AM 6 information.

10:11AM 7 Q And so are these copies of those cashier's checks?

10:11AM 8 A Yes.

10:11AM 9 Q And going back to the first page, is that a deposit slip
10:11AM 10 for those four checks combined to that law office of James
10:11AM 11 Dandar?

10:11AM 12 A Yes.

10:11AM 13 MR. AKINA: I'd offer Exhibit 11-28 into evidence.
10:11AM 14 There's a certification at 11-26.

10:11AM 15 THE COURT: Any objection?

10:11AM 16 MR. KENNEDY: No objection.

10:11AM 17 THE COURT: 11-28 is admitted. You may publish.

10:11AM 18 (Exhibit 11-28 was received in evidence.)

10:11AM 19 Q And if we go to the third page, this is one of those
10:11AM 20 checks that we were just looking at?

10:11AM 21 A It is.

10:11AM 22 Q \$20,000 to Kaulana Freitas on May 18, 2018?

10:11AM 23 A Right.

10:11AM 24 Q And it's -- going down to the fourth page, is this the
10:11AM 25 back of that check?

10:11AM 1 A It is.

10:11AM 2 Q And it was deposited at Hawaii National Bank?

10:12AM 3 A Yep.

10:12AM 4 MR. AKINA: And then if we could zoom in down here,
10:12AM 5 the sequence number.

10:12AM 6 BY MR. AKINA:

10:12AM 7 Q Do the back of each of the checks in this document have a
10:12AM 8 sequence number?

10:12AM 9 A They do.

10:12AM 10 Q And are they sequential, meaning one after another after
10:12AM 11 another?

10:12AM 12 A Yes.

10:12AM 13 Q And with the deposit slip --

10:12AM 14 MR. AKINA: We can zoom out of that, and going back to
10:12AM 15 the first page. And now the second page.

10:12AM 16 BY MR. AKINA:

10:12AM 17 Q Is the second page the back of that deposit slip?

10:12AM 18 A It is.

10:12AM 19 Q And that's for the four checks?

10:12AM 20 A Yes.

10:12AM 21 Q And this sequence number also at Hawaii National Bank, is
10:12AM 22 that the beginning of that series of numbers?

10:12AM 23 A It is.

10:12AM 24 Q All done on the same day?

10:12AM 25 A Yes.

10:12AM 1 Q So what does that mean?

10:12AM 2 A Basically that the deposit slip was transacted at the same
10:12AM 3 time as the -- as the checks. Same transaction.

10:13AM 4 MR. AKINA: We can take this down.

10:13AM 5 If we could go back to Exhibit 11-34 already in
10:13AM 6 evidence.

10:13AM 7 THE COURT: Go ahead.

10:13AM 8 BY MR. AKINA:

10:13AM 9 Q Okay. So did you do -- so that was Kaulana Freitas on the
10:13AM 10 top row, and then Delia Fabro-Miske, is she in that middle row
10:13AM 11 for \$250,000?

10:13AM 12 A Yes.

10:13AM 13 Q And similarly, were you able to look at documents that
10:13AM 14 sort of showed the flow of funds for this one?

10:13AM 15 A I was.

10:13AM 16 Q And the difference is this one didn't go back to the
10:13AM 17 Lumahai refinance, right?

10:13AM 18 A Yeah, that's correct.

10:14AM 19 Q It came out of Michael Miske's personal account?

10:14AM 20 A Yes.

10:14AM 21 Q And so can you walk the jury through just the path that it
10:14AM 22 took.

10:14AM 23 A Yes. So, yeah, looking at that kind of second horizontal
10:14AM 24 row, you have money in Mr. Miske's personal account, \$200,000,
10:14AM 25 it goes to an account at Bank of Hawaii in the name of Delia

10:14AM 1 Fabro-Miske and her minor child.

10:14AM 2 That account gets closed and moved over to Hawaiian

10:14AM 3 Financial Federal Credit Union. And so you have \$200,000 for

10:14AM 4 Michael Miske that goes into the first Delia account. The

10:14AM 5 entire balance in that account moves over to Hawaiian Financial

10:14AM 6 Federal Credit Union. So, you know, 200 of the \$268,000 total

10:14AM 7 was attributable to Mr. Miske.

10:14AM 8 And then in that last account, the Hawaiian Financial

10:15AM 9 account, \$200,000 from Mr. Miske is added to \$50,000 that is

10:15AM 10 otherwise in that account to go to the escrow account to buy

10:15AM 11 the house.

10:15AM 12 Q And I'm not going to walk you through the underlying

10:15AM 13 documents, but this chart you put the yellow box on the top

10:15AM 14 left, the 6 Lumahai refinance, right?

10:15AM 15 A Right.

10:15AM 16 Q And does this chart show just how money flowed from that

10:15AM 17 refinance to the purchase of Kumukahi Place?

10:15AM 18 A Yes.

10:15AM 19 MR. AKINA: We can take this exhibit down.

10:15AM 20 BY MR. AKINA:

10:15AM 21 Q I'm going to ask you about the Painkiller. Are you

10:15AM 22 familiar with generally what that is?

10:15AM 23 A Yes.

10:15AM 24 Q What was that?

10:15AM 25 A That's a Boston Whaler 370 Outrage pleasure craft. Yeah,

10:15AM 1 the boat name is Painkiller.

10:15AM 2 Q And how did this relate to Miske's businesses?

10:16AM 3 A The boat was purchased in the summer of 2016, and the
10:16AM 4 funds for that came from two different loans that were taken
10:16AM 5 out on behalf of one of Mr. Miske's companies, Kama'aina
10:16AM 6 Holdings.

10:16AM 7 MR. AKINA: So if we can show the witness
10:16AM 8 Exhibit 9128-002 from the defense original list.

10:16AM 9 THE COURT: Go ahead.

10:16AM 10 MR. AKINA: And permission to publish?

10:16AM 11 THE COURT: Yes.

10:16AM 12 BY MR. AKINA:

10:16AM 13 Q You see this, this is a bill of sale for the Painkiller?

10:16AM 14 A Yes.

10:17AM 15 MR. AKINA: And if we zoom in on the top quarter of
10:17AM 16 the document.

10:17AM 17 BY MR. AKINA:

10:17AM 18 Q Sold for \$425,000?

10:17AM 19 A Correct.

10:17AM 20 MR. AKINA: If we zoom out of this and zoom in on the
10:17AM 21 portion right underneath that.

10:17AM 22 BY MR. AKINA:

10:17AM 23 Q The buyer was Hawai'i Partners LLC, right?

10:17AM 24 A Yes. That was taken out in the name of Kama'aina

10:17AM 25 Holdings, but the boat was registered in the name of Hawai'i

10:17AM 1 Partners.

10:17AM 2 MR. AKINA: And if we could zoom in on the bottom
10:17AM 3 portion of this page where it starts "The undersigned buyer
10:17AM 4 accepts."

10:17AM 5 BY MR. AKINA:

10:17AM 6 Q You see that it's signed on behalf of Hawai'i Partners
10:17AM 7 LLC?

10:17AM 8 A Yes.

10:17AM 9 MR. AKINA: If we could show the witness 11-51 from
10:17AM 10 the 47th supplement.

10:17AM 11 BY MR. AKINA:

10:18AM 12 Q Is this a check for that payment \$425,000?

10:18AM 13 A It is.

10:18AM 14 MR. AKINA: I would offer 11-51 into evidence.
10:18AM 15 There's a certification at 11-35.

10:18AM 16 THE COURT: Any objection to 11-51?

10:18AM 17 MR. KENNEDY: No objection.

10:18AM 18 THE COURT: Without objection, that exhibit is
10:18AM 19 admitted. You may publish.

10:18AM 20 (Exhibit 11-51 was received in evidence.)

10:18AM 21 MR. AKINA: And focusing on the top the face of the
10:18AM 22 check.

10:18AM 23 BY MR. AKINA:

10:18AM 24 Q Who is this check being -- who's making this check out?

10:18AM 25 A So it's a, yeah, Central Pacific Bank -- official bank

10:18AM 1 check.

10:18AM 2 Q And who -- which account is it coming from?

10:18AM 3 A It is -- the source of funds comes from, yeah, Kama'aina

10:19AM 4 Holdings.

10:19AM 5 Q So this is what you were saying earlier was paid for

10:19AM 6 through Kama'aina Holdings but registered under Hawai'i

10:19AM 7 Partners?

10:19AM 8 A Yeah, correct.

10:19AM 9 MR. AKINA: We can take this down.

10:19AM 10 BY MR. AKINA:

10:19AM 11 Q You mentioned that this was paid for using two credit

10:19AM 12 applications. Were those business loans?

10:19AM 13 A Yes.

10:19AM 14 Q And did you chart out the path from those loans to this

10:19AM 15 check that we're looking at?

10:19AM 16 A I did.

10:19AM 17 MR. AKINA: Could we show the witness 11-54 from the

10:19AM 18 47th supplement?

10:19AM 19 THE COURT: Yes.

10:19AM 20 BY MR. AKINA:

10:19AM 21 Q Is this that chart just showing -- showing where the money

10:19AM 22 came from?

10:19AM 23 A It is.

10:19AM 24 MR. AKINA: I'd offer 11-54 into evidence.

10:19AM 25 THE COURT: Any objection?

10:19AM 1 MR. KENNEDY: No objection.

10:19AM 2 THE COURT: 11-54 is admitted. You may publish.

10:20AM 3 (Exhibit 11-54 was received in evidence.)

10:20AM 4 Q Okay. There are two yellow boxes. What do those
10:20AM 5 represent?

10:20AM 6 A Those represent the two loans that were taken out.

10:20AM 7 Q And money from those two loans, they ended up in this blue
10:20AM 8 box in the middle, Michael Miske's personal account?

10:20AM 9 A That's correct.

10:20AM 10 Q And then out of that account, is that where that check
10:20AM 11 that we just looked at came from?

10:20AM 12 A Yes. One of the loans went through the Kama'aina Holdings
10:20AM 13 business account, and then the other loan was deposited
10:20AM 14 directly into Mr. Miske's account, and then, yeah, correct, the
10:20AM 15 \$425,000 check came out of the personal account.

10:20AM 16 Q Okay. So I'm going to ask you questions about this first
10:20AM 17 one on the left, that first yellow box, the loan ending in 957.

10:20AM 18 MR. AKINA: If I can show you Exhibit 11-36 from the
10:20AM 19 47th supplement.

10:20AM 20 THE COURT: Go ahead.

10:20AM 21 BY MR. AKINA:

10:20AM 22 Q Is this the credit application for that loan ending in 957
10:21AM 23 that we were talking about?

10:21AM 24 A Yes.

10:21AM 25 MR. AKINA: I'd offer Exhibit 11-36 into evidence.

10:21AM 1 There's a certification at 11-35.

10:21AM 2 THE COURT: Any objection?

10:21AM 3 MR. KENNEDY: I'm just going to review it briefly,

10:21AM 4 Your Honor.

10:21AM 5 THE COURT: Yes, go ahead.

10:21AM 6 MR. KENNEDY: No objection.

10:21AM 7 THE COURT: 11-36 is admitted. You may publish it.

10:21AM 8 (Exhibit 11-36 was received in evidence.)

10:21AM 9 BY MR. AKINA:

10:21AM 10 Q So what was the amounts of the two credit applications

10:21AM 11 that went -- that were the source of the funds for the

10:21AM 12 Painkiller?

10:21AM 13 A So both of them were \$250,000.

10:21AM 14 Q So if we focus on this top box under "Credit Request

10:22AM 15 Information," is that amount reflected here, \$250,000?

10:22AM 16 A It is.

10:22AM 17 Q And under "Use of Funds," there had to be something

10:22AM 18 checked. What was checked for the use of funds?

10:22AM 19 A "Purchase equipment."

10:22AM 20 Q And do you see here this notice, can you read that out,

10:22AM 21 please?

10:22AM 22 A Yes. "This credit application is for business purposes

10:22AM 23 only. Credit for personal, family, and/or household purposes

10:22AM 24 is prohibited under business credit lines/loans."

10:22AM 25 Q Is that pretty typical for a business loan, it's got to be

10:22AM 1 for a business purpose?

10:22AM 2 A Yes.

10:22AM 3 MR. AKINA: And if we go -- zoom out of here and focus
10:22AM 4 towards the middle under the "Applicant Information."

10:22AM 5 BY MR. AKINA:

10:23AM 6 Q Okay. Who is the applicant here?

10:23AM 7 A Kama'aina Holdings.

10:23AM 8 Q And then there's an email address. Whose email address is
10:23AM 9 that?

10:23AM 10 A Yeah, mike@kama'aina.com.

10:23AM 11 MR. AKINA: If we go to page 3 of the document,
10:23AM 12 focusing on this middle box on left.

10:23AM 13 BY MR. AKINA:

10:23AM 14 Q Who is the guarantor?

10:23AM 15 A Michael Miske, Jr.

10:23AM 16 Q And if we focus on the box to the right -- on the right
10:23AM 17 side of the page of that, is there another guarantor listed for
10:23AM 18 Kama'aina Termite and Pest Control?

10:23AM 19 A Yes.

10:23AM 20 MR. AKINA: If we go to page 4 of the document. If we
10:23AM 21 can focus on that first signature in the middle and the name
10:23AM 22 next to it.

10:23AM 23 BY MR. AKINA:

10:24AM 24 Q Is this signed by Michael Miske?

10:24AM 25 A Yes.

10:24AM 1 MR. AKINA: And there's a bunch of language above
10:24AM 2 that. I want to focus on the first paragraph towards the third
10:24AM 3 to the last line where it starts with number 5.
10:24AM 4 BY MR. AKINA:
10:24AM 5 Q It's a little hard to make out, but number 5, is that
10:24AM 6 essentially the same language from that notice on the first
10:24AM 7 page?
10:24AM 8 A It is.
10:24AM 9 Q About this has to be for business purposes and not for
10:24AM 10 personal, family or household purposes?
10:24AM 11 A Yes.
10:24AM 12 Q And I'm going to show you -- ask you about the second
10:24AM 13 loan.
10:24AM 14 MR. AKINA: If we could show the witness Exhibit 11-41
10:24AM 15 from the 47th list.
10:24AM 16 THE COURT: Yes, go ahead.
10:24AM 17 BY MR. AKINA:
10:24AM 18 Q This is that second loan ending 956, the application for
10:25AM 19 it?
10:25AM 20 A Yes.
10:25AM 21 Q Also for \$250,000?
10:25AM 22 A Right.
10:25AM 23 MR. AKINA: And I would offer 11-41 into evidence.
10:25AM 24 There's a certification at 11-35.
10:25AM 25 THE COURT: Any objection?

10:25AM 1 MR. KENNEDY: Just give me a moment to review it, Your
10:25AM 2 Honor.
10:25AM 3 THE COURT: Of course.
10:25AM 4 MR. KENNEDY: No objection.
10:25AM 5 THE COURT: 11-41 is admitted you. You may publish
10:25AM 6 it.
10:25AM 7 (Exhibit 11-41 was received in evidence.)
10:25AM 8 BY MR. AKINA:
10:25AM 9 Q Are a lot of the terms in this application similar to the
10:25AM 10 terms in the first application we looked at?
10:25AM 11 A Similar, yeah. The amount is the same, \$250,000. This is
10:25AM 12 a line of credit and not a term loan, but yes.
10:25AM 13 Q And so focusing on the top box again. Same amount,
10:25AM 14 \$250,000, right?
10:25AM 15 A Right.
10:25AM 16 Q And like you said, line of credit. This time what option
10:26AM 17 was checked for the use of the funds?
10:26AM 18 A "Other business purpose and working capital" was typed in.
10:26AM 19 Q And then is that same notice about person -- about
10:26AM 20 business purposes only here?
10:26AM 21 A Yes.
10:26AM 22 MR. AKINA: And zooming out of this, focusing on the
10:26AM 23 applicant information.
10:26AM 24 BY MR. AKINA:
10:26AM 25 Q Is that the same applicant information as the other one?

10:26AM 1 A It is, yeah. Kama'aina Holdings with an associated email
10:26AM 2 address of mike@kama'aina.com.

10:26AM 3 Q And if we go to page 3, is Michael Miske and Kama'aina
10:26AM 4 Termite and Pest Control also the guarantor on this loan?

10:26AM 5 A Yes.

10:26AM 6 Q And if we go to page 4, is this also signed by Michael
10:26AM 7 Miske?

10:26AM 8 A Yes.

10:26AM 9 Q And if we focus on that first paragraph above it, does it
10:27AM 10 have that similar language about business purposes only?

10:27AM 11 A Yes, it does.

10:27AM 12 Q And on the far right, the date for the signature, this is
10:27AM 13 May 2016; is that right?

10:27AM 14 A Right.

10:27AM 15 Q Is that the same date as the other loan?

10:27AM 16 A Yes.

10:27AM 17 MR. AKINA: If we could show the witness Exhibit 11-53
10:27AM 18 from the 47th list.

10:27AM 19 THE COURT: Yes.

10:27AM 20 BY MR. AKINA:

10:27AM 21 Q Are these text messages between Trisha Castro and Michael
10:27AM 22 Miske?

10:27AM 23 A They are.

10:27AM 24 MR. AKINA: I'd offer Exhibit 11-53 into evidence.

10:27AM 25 There is a certification at 9-1313 from the government's 29th

10:27AM 1 list.

10:27AM 2 THE COURT: Any objection?

10:27AM 3 MR. KENNEDY: Just a moment to review them, Your

10:27AM 4 Honor.

10:28AM 5 No objection.

10:28AM 6 THE COURT: 11-53 is admitted. You may publish.

10:28AM 7 (Exhibit 11-53 was received in evidence.)

10:28AM 8 MR. AKINA: Focusing towards the middle of the page,

10:28AM 9 starting 2016, October 5th, at 23:26. So lower than where the

10:29AM 10 mouse is right now. Okay. Right there. And go down -- yeah,

10:29AM 11 that's good.

10:29AM 12 BY MR. AKINA:

10:29AM 13 Q Okay. You see this text from Trisha Castro on

10:29AM 14 October 5th, 2016: "Do you own Painkiller personally or

10:29AM 15 Holdings?"

10:29AM 16 A Yes.

10:29AM 17 Q And Holdings would be Kama'aina Holdings?

10:29AM 18 A I assume so, yeah.

10:29AM 19 MR. AKINA: And if we zoom out of here. If we could

10:29AM 20 focus on the next couple of lines of text starting at 23:26

10:29AM 21 hours. And further down.

10:29AM 22 BY MR. AKINA:

10:29AM 23 Q Right here, what is the response?

10:29AM 24 A Personally.

10:29AM 25 MR. AKINA: We can zoom out.

10:29AM 1 BY MR. AKINA:

10:29AM 2 Q Is that consistent with what was on the loan applications?

10:30AM 3 A No.

10:30AM 4 MR. AKINA: Okay. We can take this down.

10:30AM 5 BY MR. AKINA:

10:30AM 6 Q I'm going to ask you about another boat, the Rachel. Is
10:30AM 7 that a fishing vessel?

10:30AM 8 A It is.

10:30AM 9 Q And was that vessel also sold pursuant -- was that sold?

10:30AM 10 A Yes, the vessel was sold.

10:30AM 11 Q And was that for approximately \$676,000 -- \$676,785.56 --

10:30AM 12 THE COURT REPORTER: Could you say that again?

10:30AM 13 BY MR. AKINA:

10:30AM 14 Q \$676,785.56.

10:30AM 15 A Yes.

10:30AM 16 Q Was there anything accompanying the -- the Rachel as well?

10:30AM 17 A Yes. So there's a fishing permit that's associated with
10:30AM 18 the vessel or that was at the time.

10:30AM 19 Q Is that a longline limited entry permit?

10:31AM 20 A Yes.

10:31AM 21 Q And generally, what does that let you do?

10:31AM 22 A It allows for, you know, fishing certain species in
10:31AM 23 certain areas, and then this permit specifically allowed for
10:31AM 24 tuna fishing in parts of the Pacific.

10:31AM 25 Q And is that required to fish around Hawaii?

10:31AM 1 A It's required to at least do, yeah, certain fishing

10:31AM 2 activities. Not exactly sure what.

10:31AM 3 Q Not all fishing activities but certain fishing activities.

10:31AM 4 A Right.

10:31AM 5 MR. AKINA: If we could show the witness Exhibit 11-55

10:31AM 6 from the 47th supplemental.

10:31AM 7 THE COURT: Yes.

10:31AM 8 BY MR. AKINA:

10:31AM 9 Q Is this a buy-sell agreement for the Rachel and that entry

10:31AM 10 permit?

10:31AM 11 A It is.

10:31AM 12 Q And if we go to the last page, page 3, is it signed by

10:31AM 13 Michael Miske?

10:31AM 14 A It is.

10:31AM 15 MR. AKINA: And I'd offer Exhibit 11-55 into evidence.

10:32AM 16 There is a certification at 1-1050 from the original list.

10:32AM 17 THE COURT: Any objection?

10:32AM 18 MR. KENNEDY: No objection.

10:32AM 19 THE COURT: 11-55 then is admitted. You may publish

10:32AM 20 it.

10:32AM 21 (Exhibit 11-55 was received in evidence.)

10:32AM 22 MR. AKINA: If we can focus here on the two

10:32AM 23 signatures. This is the last page.

10:32AM 24 BY MR. AKINA:

10:32AM 25 Q Is the bottom, that's Mike Miske?

10:32AM 1 A Correct.

10:32AM 2 Q On behalf of Kama'aina Holdings?

10:32AM 3 A Yes.

10:32AM 4 Q And the date here for the top signature is December 2nd,
10:32AM 5 2010?

10:32AM 6 A That's correct.

10:32AM 7 MR. AKINA: If we could go to the first page, and
10:32AM 8 focusing on the top portion, including the first three
10:32AM 9 paragraphs.

10:32AM 10 BY MR. AKINA:

10:32AM 11 Q Who is this agreement between? Who are the parties?

10:32AM 12 A So the agreement is between Kama'aina Holdings, who is
10:33AM 13 buying the Rachel and the fishing permit, and Pelagic Fisheries
10:33AM 14 is the seller through an escrow agent that was associated with
10:33AM 15 this. But, yeah, that's the buyer and seller, and the -- yes.

10:33AM 16 Q And there are two dollar amounts listed here. Can you
10:33AM 17 explain what those are for?

10:33AM 18 A Correct. Yeah, so the total purchase price was \$900,000,
10:33AM 19 and in this paragraph they just kind of break out, you know, at
10:33AM 20 least on paper, how much is attributable to the boat versus how
10:33AM 21 much is attributable to the fishing license.

10:33AM 22 Q And was it 800,000 for the boat and 100,000 for the
10:33AM 23 Hawaiian limited entry longline permit?

10:33AM 24 A Yes.

10:33AM 25 MR. AKINA: If we can show the witness Exhibit 11-56

10:33AM 1 from the 47th supplement.

10:33AM 2 THE COURT: Go ahead.

10:33AM 3 BY MR. AKINA:

10:33AM 4 Q And what is this?

10:34AM 5 A This is the bill of sale documenting the transaction.

10:34AM 6 Q Between those two parties again?

10:34AM 7 A Yeah, between Pelagic Fisheries as the seller and
10:34AM 8 Kama'aina Holdings as the buyer.

10:34AM 9 MR. AKINA: I'd offer Exhibit 11-56 into evidence.

10:34AM 10 THE COURT: Any objection to that?

10:34AM 11 MR. KENNEDY: No objection.

10:34AM 12 THE COURT: 11-56 is admitted without objection. You
10:34AM 13 may publish it.

10:34AM 14 (Exhibit 11-56 was received in evidence.)

10:34AM 15 MR. AKINA: And focusing on top portions, one -- boxes
10:34AM 16 1, 2, 3 and 4.

10:34AM 17 BY MR. AKINA:

10:34AM 18 Q This lists the parties from that previous buy-sell
10:34AM 19 agreement?

10:34AM 20 A That's correct.

10:34AM 21 MR. AKINA: We can take this down.

10:34AM 22 BY MR. AKINA:

10:34AM 23 Q Okay. And how was the -- where did the money come from
10:34AM 24 for the Rachel?

10:34AM 25 A The operations, you have Kama'aina Termite and Pest

10:35AM 1 Control.

10:35AM 2 Q And were you able to trace that to a specific type of job
10:35AM 3 at Kama'aina Termite and Pest Control?

10:35AM 4 A Yes.

10:35AM 5 Q Which job?

10:35AM 6 A It was the job at the Keola La'i building.

10:35AM 7 Q And were you able to chart out that path of funds?

10:35AM 8 A I was.

10:35AM 9 MR. AKINA: Could we show the witness Exhibit 11-59
10:35AM 10 from the 47th list?

10:35AM 11 THE COURT: Yes.

10:35AM 12 BY MR. AKINA:

10:35AM 13 Q Is this that path of funds that you charted out?

10:35AM 14 A It is.

10:35AM 15 MR. AKINA: I'd offer 11-59 into evidence.

10:35AM 16 THE COURT: Any objection?

10:35AM 17 MR. KENNEDY: No objection.

10:35AM 18 THE COURT: 11-59 is admitted. You may publish.

10:35AM 19 (Exhibit 11-59 was received in evidence.)

10:35AM 20 Q Can you walk the jury through the path of funds for the
10:35AM 21 Rachel and the longline permit?

10:35AM 22 A Yes. So starting at the top left, that's income from the
10:35AM 23 Keola La'i building job, which -- and Nordic PCL was the
10:36AM 24 company. So Nordic PCL for the Keola La'i job wrote two
10:36AM 25 checks. The checks went into the Kama'aina Termite business

10:36AM 1 account, and then \$950,000 of that money went to Kama'aina
10:36AM 2 Holdings, and then approximately \$900,000 of that money went to
10:36AM 3 buy the -- the Rachel and the permit.
10:36AM 4 Q So the Rachel and the permit were obtained using proceeds
10:36AM 5 from -- using Kama'aina Termite and Pest Control proceeds
10:36AM 6 specifically from that Keola La'i job?
10:36AM 7 A That's correct.
10:36AM 8 Q Was any money from -- was there money spent also to
10:36AM 9 maintain the Rachel?
10:36AM 10 A Yes.
10:36AM 11 Q And where did that come from?
10:37AM 12 A So in 2018, there was a good bit of refurbishment, repair,
10:37AM 13 etcetera, work done. And the money that was -- part of the
10:37AM 14 money that was used to do that work came from the refinance
10:37AM 15 from the Bank of Hawaii loan from the 6 Lumahai property.
10:37AM 16 Q That's the same refinance you were talking about earlier?
10:37AM 17 A That's correct.
10:37AM 18 Q And were you able to chart out the path for the funds for
10:37AM 19 that as well?
10:37AM 20 A Yes.
10:37AM 21 MR. AKINA: And could we show the witness
10:37AM 22 Exhibit 11-60?
10:37AM 23 THE COURT: Yes, go ahead.
10:37AM 24 BY MR. AKINA:
10:37AM 25 Q And is this that path of funds that you charted out?

10:37AM 1 A It is.

10:37AM 2 MR. AKINA: I'd offer Exhibit 11-60 into evidence.

10:37AM 3 THE COURT: Any objection?

10:37AM 4 MR. KENNEDY: No objection.

10:37AM 5 THE COURT: 11-60 is admitted. You may publish.

10:37AM 6 (Exhibit 11-60 was received in evidence.)

10:38AM 7 BY MR. AKINA:

10:38AM 8 Q So based on the documents you reviewed, did money come
10:38AM 9 from that refinance? I think earlier you testified that that
10:38AM 10 whole 1.9 million went into Michael Miske's personal accounts?

10:38AM 11 A That's correct.

10:38AM 12 Q And then there's a \$25,000 payment that goes out in May of
10:38AM 13 2018?

10:38AM 14 A Yes, there's a \$25,000 transfer to Kama'aina Holdings, and
10:38AM 15 then that \$25,000 was used in various ways for maintenance on
10:38AM 16 the Rachel.

10:38AM 17 Q And there's some language in quotes here, "Shipyard
10:38AM 18 payment, dry dock 2018." Did that come from the documents you
10:38AM 19 were reviewing?

10:38AM 20 A Yes.

10:38AM 21 Q So that was -- what was that?

10:38AM 22 A That would have been a notation on the documents that we
10:38AM 23 got from the bank.

10:38AM 24 Q I'm going to ask you --

10:39AM 25 MR. AKINA: If we can show and publish Exhibit 11-19,

10:39AM 1 which is already in evidence.

10:39AM 2 THE COURT: Yes, go ahead.

10:39AM 3 BY MR. AKINA:

10:39AM 4 Q This is the summary chart that you created of Michael
10:39AM 5 Miske's personal accounts showing when that refinance loan hit
10:39AM 6 the account?

10:39AM 7 A Yeah, correct.

10:39AM 8 MR. AKINA: And if we go to page 9 of the document.

10:39AM 9 And focusing on May 25th, 2018. There is a check -- let's do
10:39AM 10 the first left half of the page first.

10:39AM 11 BY MR. AKINA:

10:39AM 12 Q This one, May 25th, 2018, Check Number 296 for \$25,000, is
10:40AM 13 that what was depicted in that chart?

10:40AM 14 A Yes. The bottom line, yeah.

10:40AM 15 Q And if we focus on the rest of the row to the right of it,
10:40AM 16 it was made out to Kama'aina Holdings with the notation for
10:40AM 17 "Shipyard payment, dry dock"?

10:40AM 18 A That's correct.

10:40AM 19 MR. AKINA: We can take this down.

10:40AM 20 BY MR. AKINA:

10:40AM 21 Q Was there a Ferrari that was seized from 6 Lumahai?

10:40AM 22 A There was.

10:40AM 23 Q Specifically a Ferrari Berlinetta?

10:40AM 24 A Yes.

10:40AM 25 MR. AKINA: Could we show and publish Exhibit 9-1194,

10:40AM 1 from the third supplement already in evidence?

10:41AM 2 THE COURT: I don't have it.

10:41AM 3 MR. AKINA: 9-1194 from the third supplement?

10:41AM 4 THE COURT: Yes. Okay, go ahead.

10:41AM 5 BY MR. AKINA:

10:41AM 6 Q This is a picture of that Ferrari?

10:41AM 7 A It is.

10:41AM 8 MR. AKINA: And if we can now publish Exhibit 9-1197
10:41AM 9 from the third supplement.

10:42AM 10 And going to page 5 of the document.

10:42AM 11 BY MR. AKINA:

10:42AM 12 Q Do you see, if we focus on top left corner, the buyer in
10:42AM 13 the name of Hawai'i Partners; is that correct?

10:42AM 14 A That's correct, yes.

10:42AM 15 MR. AKINA: And zooming out of this, right below that
10:42AM 16 under the description of the vehicle, the year, make and model.

10:42AM 17 BY MR. AKINA:

10:42AM 18 Q What was the year, make and model?

10:42AM 19 A 2017 Ferrari F12berlinetta.

10:42AM 20 MR. AKINA: And then if we could focus on the VIN,
10:42AM 21 which is right below that to the right.

10:42AM 22 BY MR. AKINA:

10:42AM 23 Q The VIN number, is it ZFF74UFA5H0223173?

10:43AM 24 A Yes.

10:43AM 25 Q And above that there's a date of May 30th, 2020, to be

10:43AM 1 delivered; is that correct?

10:43AM 2 A Yes.

10:43AM 3 Q And below that, what was the purchase price?

10:43AM 4 A Yeah, a little over two -- well, almost 218. \$217,866.52.

10:43AM 5 Q And how was this Ferrari paid for?

10:43AM 6 A It came -- yeah, the source of the money was Kama'aina
10:43AM 7 Termite bank account.

10:43AM 8 Q And were you able to trace that to a specific job?

10:43AM 9 A Yes.

10:43AM 10 Q Which job?

10:43AM 11 A It was a job on the Big Island related to the Maunakea --
10:43AM 12 Maunakea LLC.

10:43AM 13 MR. AKINA: If we could show the witness Exhibit 11-67
10:44AM 14 from the 47th supplemental.

10:44AM 15 THE COURT: Go ahead.

10:44AM 16 BY MR. AKINA:

10:44AM 17 Q What are we looking at here?

10:44AM 18 A Yeah, so a portion of the previous -- previous exhibit
10:44AM 19 related to, you know, bank accounts, and so this is a portion
10:44AM 20 of the Kama'aina Termite and Pest Control bank account for
10:44AM 21 April, May and June of 2020.

10:44AM 22 Q So did you put it into a -- an Excel spreadsheet showing
10:44AM 23 all the activity in that period after April 2020?

10:44AM 24 A Yes.

10:44AM 25 Q And does that cover payments from the Maunakea job?

10:44AM 1 A Yes.

10:44AM 2 Q And does it cover a payment for the Ferrari?

10:44AM 3 A Yes.

10:45AM 4 MR. AKINA: I would offer Exhibit 11-67 into evidence.

10:45AM 5 THE COURT: Any objection?

10:45AM 6 MR. KENNEDY: No objection.

10:45AM 7 THE COURT: 11-67 is admitted. You may publish.

10:45AM 8 (Exhibit 11-67 was received in evidence.)

10:45AM 9 MR. AKINA: And if we could focus on the top left-hand
10:45AM 10 corner between the gray boxes.

10:45AM 11 BY MR. AKINA:

10:45AM 12 Q This is a summary of account activity for Kama'aina
10:45AM 13 Termite and Pest Control?

10:45AM 14 A Yes, one of the Kama'aina Termite and Pest Control
10:45AM 15 accounts. This is the business savings account.

10:45AM 16 MR. AKINA: And if we zoom out of here. Focusing on
10:45AM 17 the balance in the middle of the page from the top line. And
10:45AM 18 the -- yeah.

10:45AM 19 BY MR. AKINA:

10:45AM 20 Q Okay. So the top line where this starts is April 2020.
10:46AM 21 What does this represent, this starting balance?

10:46AM 22 A So, yeah, this is the balance that's in the account as of
10:46AM 23 April 1st before any of the money from the Maunakea job gets
10:46AM 24 transferred into the -- into the account.

10:46AM 25 Q So there's approximately \$151,000 prior to the Maunakea

10:46AM 1 job payments.

10:46AM 2 A Correct.

10:46AM 3 MR. AKINA: If we could zoom out of that. If we focus
10:46AM 4 on the next couple of payments, the Additions column all the
10:46AM 5 way to the Source Description for the rest of April.

10:46AM 6 BY MR. AKINA:

10:46AM 7 Q Okay. And then you see three customer deposits being made
10:46AM 8 in April of varying amounts?

10:46AM 9 A Right.

10:46AM 10 Q What are those?

10:46AM 11 A Yeah, again, those are funds from the Maunakea LLC related
10:47AM 12 to the -- the job on Big Island. So these are payments on
10:47AM 13 that -- for that service.

10:47AM 14 MR. AKINA: And if we zoom out.

10:47AM 15 BY MR. AKINA:

10:47AM 16 Q And then there's another deposit, May 5th, 2020. Is that
10:47AM 17 a fourth payment for that Maunakea job as well?

10:47AM 18 A Yes.

10:47AM 19 Q Now, if we zoom out of here, going down to June 1st, 2020,
10:47AM 20 do you see a withdrawal for \$217,000?

10:47AM 21 A Yes.

10:47AM 22 Q Where did that go to?

10:47AM 23 A So that money went into the Hawai'i Partners bank account.

10:47AM 24 Q And ultimately where did it go?

10:47AM 25 A To purchase the Ferrari.

10:47AM 1 Q And as of June 1st, 2020, was there -- was there a
10:47AM 2 significant amount of money coming in besides the Maunakea job?
10:48AM 3 A No.
10:48AM 4 Q And but for that Maunakea job money, would the starting
10:48AM 5 balance of \$151,000 have been enough to cover that \$217,000
10:48AM 6 payment?
10:48AM 7 A No.
10:48AM 8 MR. AKINA: If we could show the witness
10:48AM 9 Exhibit 11-1199 from the third supplement.
10:48AM 10 THE COURT: Go ahead.
10:48AM 11 BY MR. AKINA:
10:48AM 12 Q What are we looking at here?
10:48AM 13 A So, yeah, documentation, a check from the Bank of Hawaii
10:48AM 14 for the payment on the -- for the Ferrari.
10:48AM 15 MR. AKINA: I'd offer Exhibit 9-1199 into evidence.
10:48AM 16 THE COURT: Any objection to that?
10:48AM 17 MR. KENNEDY: No objection.
10:48AM 18 THE COURT: 9-1199 is admitted then without objection.
10:48AM 19 You may publish.
10:48AM 20 (Exhibit 9-1199 was received in evidence.)
10:49AM 21 MR. AKINA: If we can focus in on the check itself.
10:49AM 22 BY MR. AKINA:
10:49AM 23 Q And -- and what's the date?
10:49AM 24 A May 30th, 2020.
10:49AM 25 Q And I said check, but this is a receipt for that check; is

10:49AM 1 that correct?

10:49AM 2 A Yes. Yeah, it's -- yeah, a Bank of Hawaii documentation
10:49AM 3 for the -- for the payment, yeah.

10:49AM 4 Q Okay. And the purchaser is Hawai'i Partners?

10:49AM 5 A That's correct.

10:49AM 6 Q And this is paid out to Ferrari Hawaii?

10:49AM 7 A Yes.

10:49AM 8 Q Now, so based on the documents reviewed, was the Ferrari
10:49AM 9 purchased with proceeds from Kama'aina Termite and Pest
10:49AM 10 Control, specifically the Maunakea job?

10:49AM 11 A Yes.

10:49AM 12 MR. AKINA: You can take this exhibit down.

10:49AM 13 If we could go back to Exhibit 11-67.

10:49AM 14 THE COURT: Go ahead.

10:49AM 15 MR. AKINA: I want to focus on this -- on the top
10:49AM 16 portions, the April and May additions and subtractions --
10:50AM 17 sorry, from April to May 5th.

10:50AM 18 Could you do additions and subtractions?

10:50AM 19 BY MR. AKINA:

10:50AM 20 Q So these top three numbers, previously you testified that
10:50AM 21 came from the Maunakea job?

10:50AM 22 A Right.

10:50AM 23 Q And then this subsequent number, \$669,000 approximately,
10:50AM 24 that was a fourth payment from the Maunakea job?

10:50AM 25 A Right.

10:50AM 1 Q And then on May 5th, 2020, there's a subtraction of
10:50AM 2 approximately \$1.1 million. What do the parentheses represent
10:50AM 3 around that number?
10:50AM 4 A Just the parentheses -- parentheses just show that it's
10:50AM 5 negative. It's a withdrawal, a subtraction.
10:50AM 6 Q So this is money going out of the Kama'aina Termite and
10:51AM 7 Pest Control accounts?
10:51AM 8 A Yes.
10:51AM 9 Q And does this amount, specifically \$1,162,826.76, is that
10:51AM 10 the sum of the first two payments from the Maunakea job?
10:51AM 11 A It is.
10:51AM 12 Q And what was -- was this a cash withdrawal or a check, or
10:51AM 13 what was this, this \$1.1 million --
10:51AM 14 A It was a -- yeah, it was a withdrawal, and it was -- it's
10:51AM 15 an official bank check.
10:51AM 16 MR. AKINA: If we could show Exhibit 11-72.
10:51AM 17 THE COURT: Okay.
10:51AM 18 BY MR. AKINA:
10:51AM 19 Q Is this a copy of that cashier's check for that amount
10:51AM 20 coming out of Kama'aina Termite and Pest Control's account?
10:51AM 21 A Yes, it is.
10:52AM 22 MR. AKINA: I'd offer Exhibit 11-72 into evidence.
10:52AM 23 THE COURT: Any objection?
10:52AM 24 MR. KENNEDY: No objection.
10:52AM 25 THE COURT: 11-72 is admitted. You may publish.

10:52AM 1 (Exhibit 11-72 was received in evidence.)

10:52AM 2 MR. AKINA: If we could focus on the cashier's check.

10:52AM 3 BY MR. AKINA:

10:52AM 4 Q So you see that this -- so this corresponds to that line

10:52AM 5 item on the chart that we were just looking at?

10:52AM 6 A It does.

10:52AM 7 Q And the date is May 5th, 2020, on this cashier's check?

10:52AM 8 A Right.

10:52AM 9 Q And who is it made out to?

10:52AM 10 A Kama'aina Termite and Pest Control.

10:52AM 11 Q Do you know who drew this cashier's check out of the

10:52AM 12 account?

10:52AM 13 A Yeah, based on the -- the documents from the bank, yeah,

10:52AM 14 Delia Fabro-Miske.

10:53AM 15 MR. AKINA: And if we zoom out of here. If I could

10:53AM 16 show the witness Exhibit 11-71 from the 47th supplement.

10:53AM 17 THE COURT: Yes.

10:53AM 18 MR. AKINA: If we go to the second page.

10:53AM 19 BY MR. AKINA:

10:53AM 20 Q And what are we looking at here?

10:53AM 21 A Yeah, so documentation again from Bank of Hawaii related

10:53AM 22 to that withdrawal and the corresponding cashier's check.

10:53AM 23 MR. AKINA: If we go back to the first page.

10:53AM 24 I offer Exhibit 11-71 into evidence. There's a

10:53AM 25 certification at 9-1334.

10:53AM 1 THE COURT: Any objection?

10:53AM 2 MR. KENNEDY: No objection.

10:53AM 3 THE COURT: 11-71 is admitted. You may publish.

10:53AM 4 (Exhibit 11-71 was received in evidence.)

10:53AM 5 MR. AKINA: And so this is from Bank of Hawaii, and if

10:53AM 6 we could focus on the first -- the withdrawal -- the face of

10:53AM 7 that withdrawal slip. The entire -- the entire slip.

10:53AM 8 BY MR. AKINA:

10:54AM 9 Q And what does this show?

10:54AM 10 A So, yeah, this is the withdrawal slip documentation, yeah,

10:54AM 11 that would have been prepared at the time the check was issued

10:54AM 12 in May, and the signature appears to be Delia Fabro's.

10:54AM 13 Q And this is the same dollar amount?

10:54AM 14 A Yes.

10:54AM 15 Q And the same date, May 5th, 2020?

10:54AM 16 A Right.

10:54AM 17 Q So fair to say that this cashier's check in a little bit

10:54AM 18 over \$1.1 million, that's money that came from the Maunakea

10:54AM 19 job?

10:54AM 20 A Yes.

10:54AM 21 MR. AKINA: We can take this down.

10:54AM 22 BY MR. AKINA:

10:54AM 23 Q And in addition to the Ferrari, were other vehicles

10:54AM 24 seized?

10:54AM 25 A Yes.

10:54AM 1 Q And that was pursuant to court order?

10:55AM 2 A They were seized, yeah, as evidence when the search
10:55AM 3 warrant happened.

10:55AM 4 Q And what types of other vehicles were seized?

10:55AM 5 A There were four Volkswagens and a Ford Bronco.

10:55AM 6 THE COURT: Mr. Akina, if you're going to move -- if
10:55AM 7 you're in the position of moving past the Ferrari, this might
10:55AM 8 be a good time to take a break.

10:55AM 9 MR. AKINA: Sounds good, Your Honor.

10:55AM 10 THE COURT: Okay. We'll go ahead and take our break.
10:55AM 11 It's nearly 11:00.

10:55AM 12 As we go to break, I remind our jurors to please
10:55AM 13 refrain from discussing the substance of this case with anyone,
10:55AM 14 including each other until I advise you otherwise; to also
10:55AM 15 refrain from accessing any media or other accounts of this case
10:55AM 16 that may be out there; and do not conduct your own
10:55AM 17 investigation into anything relating to this case.

10:55AM 18 We'll take a short break, and a reminder that we will
10:55AM 19 be taking a full lunch break somewhere around the noon hour,
10:55AM 20 maybe a little later, given when we're breaking now.

10:55AM 21 (Proceedings were recessed at 10:55 a.m. to 11:26
11:24AM 22 a.m.)

11:26AM 23 THE COURT: All right. Mr. Akina, you may resume when
11:26AM 24 you're ready.

11:26AM 25 MR. AKINA: Could we publish Exhibit 11-28 that was

11:26AM 1 admitted earlier this morning?

11:26AM 2 THE COURT: Yes, you may.

11:26AM 3 BY MR. AKINA:

11:26AM 4 Q So going back to the Kumukahi residence, you had testified
11:26AM 5 earlier this morning that money had gone from -- from the Keola
11:26AM 6 La'i job to Michael Miske to -- sorry, to the Lumahai refinance
11:26AM 7 all the way through Mr. Miske to Kaulana Freitas; is that
11:26AM 8 correct?

11:26AM 9 A Right.

11:26AM 10 Q And then money -- those checks went from Kaulana Freitas
11:27AM 11 to an attorney, James Dandar?

11:27AM 12 A Right, yeah.

11:27AM 13 Q And did you -- are you aware of who James Dandar was in
11:27AM 14 relation to this foreclosure sale?

11:27AM 15 A Yeah, so it was purchased at foreclosure, right, and so
11:27AM 16 the person running the foreclosure auction -- this is an escrow
11:27AM 17 account basically. So, yeah, the law offices of James Dandar
11:27AM 18 is essentially just an escrow or trust account to hold those
11:27AM 19 funds while the purchase process continues.

11:27AM 20 MR. AKINA: And if we could show the witness
11:27AM 21 Exhibit 11-24 from the 47th supplement.

11:27AM 22 Just going to the second page, focusing on that first
11:27AM 23 paragraph 1 at the bottom.

11:27AM 24 BY MR. AKINA:

11:27AM 25 Q And is it your understanding that James Dandar, he was

11:28AM 1 appointed by a state court to oversee the sale of that

11:28AM 2 property?

11:28AM 3 A Yes.

11:28AM 4 MR. AKINA: We can take this down.

11:28AM 5 BY MR. AKINA:

11:28AM 6 Q So before the break you testified that there were several

11:28AM 7 vehicles in addition to the Ferrari. And of those four

11:28AM 8 Volkswagens and the Ford Bronco that you mentioned, who -- what

11:28AM 9 entity were they held in? Who was the registered owner?

11:28AM 10 A The registered owner was Hawai'i Partners LLC.

11:28AM 11 Q For each of those vehicles?

11:28AM 12 A Right.

11:28AM 13 Q And those were seized in July of 2020?

11:28AM 14 A Yes.

11:28AM 15 MR. AKINA: Can we show and publish Exhibit 9-1232

11:29AM 16 from the third supplement.

11:29AM 17 THE COURT: Yes, go ahead.

11:29AM 18 BY MR. AKINA:

11:29AM 19 Q Is this a picture of three of those Volkswagens?

11:29AM 20 A It is.

11:29AM 21 MR. AKINA: And if we can show -- if we can publish

11:29AM 22 Exhibit 9-1219 from the third supplement, also in evidence.

11:29AM 23 THE CORT: Go ahead.

11:29AM 24 BY MR. AKINA:

11:29AM 25 Q Is this the fourth Volkswagen?

11:29AM 1 A It is, yeah. The back of the Volkswagen van.

11:29AM 2 MR. AKINA: And then if we can publish Exhibit 9-1230

11:30AM 3 from the third supplement.

11:30AM 4 BY MR. AKINA:

11:30AM 5 Q Is this the Ford Bronco you mentioned?

11:30AM 6 A It is.

11:30AM 7 MR. AKINA: Now, can we show the witness

11:30AM 8 Exhibit 11-73?

11:30AM 9 THE COURT: Go ahead.

11:30AM 10 MR. AKINA: And 11-74.

11:30AM 11 THE COURT: Yes.

11:30AM 12 MR. AKINA: 11-75.

11:30AM 13 THE COURT: Yes.

11:30AM 14 MR. AKINA: 11-76.

11:30AM 15 THE COURT: Yes.

11:30AM 16 MR. AKINA: 11-77.

11:30AM 17 THE COURT: Yes.

11:30AM 18 MR. AKINA: 11-78.

11:30AM 19 THE COURT: Go ahead.

11:30AM 20 MR. AKINA: And 11-79.

11:30AM 21 THE COURT: Yes.

11:30AM 22 BY MR. AKINA:

11:31AM 23 Q Are these all DMV records with certifications relating to

11:31AM 24 those vehicles that I just showed pictures of?

11:31AM 25 A Yes. Yeah, registration and ownership documentation

11:31AM 1 maintained by the City and County, yeah.

11:31AM 2 Q And they have -- they each have a seal attesting to it

11:31AM 3 being correct and accurate?

11:31AM 4 A Yes.

11:31AM 5 MR. AKINA: I'd offer Exhibits 11-73 through 11-79

11:31AM 6 into evidence.

11:31AM 7 THE COURT: Any objection?

11:31AM 8 MR. KENNEDY: No objection.

11:31AM 9 THE COURT: 11-73 through 11-79 then are each admitted

11:31AM 10 without objection. You may publish.

11:31AM 11 (Exhibits 11-73 through 11-79 were received in evidence.)

11:31AM 12 MR. AKINA: If we could start with 11-73.

11:31AM 13 BY MR. AKINA:

11:31AM 14 Q And is this one of the Volkswagen Bugs?

11:31AM 15 A Yes.

11:31AM 16 Q And specifically, this is the 1951 Volkswagen. What's the

11:31AM 17 VIN number here, if we could focus on that portion?

11:32AM 18 A 10234188.

11:32AM 19 Q And what was the license number for that?

11:32AM 20 A SYB865.

11:32AM 21 MR. AKINA: And if we zoom out of that.

11:32AM 22 BY MR. AKINA:

11:32AM 23 Q And it's registered to Hawai'i Partners, correct?

11:32AM 24 A Yes.

11:32AM 25 Q And what's the issuance date on this?

11:32AM 1 A It's 8/26/2016, so August of 2016.

11:32AM 2 MR. AKINA: If we can go to Exhibit 11-74. And

11:32AM 3 focusing on these top boxes showing the vehicle information.

11:32AM 4 All the way to the date.

11:32AM 5 BY MR. AKINA:

11:32AM 6 Q And this is for another Volkswagen Bug, 1956 model?

11:32AM 7 A Correct.

11:32AM 8 Q And what's the license number?

11:33AM 9 A 56VDUB.

11:33AM 10 Q And the VIN number?

11:33AM 11 A 109382821.

11:33AM 12 Q What date was this registration issued?

11:33AM 13 A 8/29/2016.

11:33AM 14 Q And zooming out, does it show Hawai'i Partners as the

11:33AM 15 registered owner?

11:33AM 16 A Yes.

11:33AM 17 Q If we could go to 11-76, is this for another one of the

11:33AM 18 Volkswagen Bugs?

11:33AM 19 A Yes.

11:33AM 20 Q And zooming in on that box with the vehicle information,

11:33AM 21 this is a 1957 model?

11:33AM 22 A Yes.

11:33AM 23 Q And what's the license number?

11:33AM 24 A EBYGRL.

11:33AM 25 Q And the VIN?

11:33AM 1 A 1529889.

11:33AM 2 Q And what date is this registration issued?

11:33AM 3 A 7/14/27 (verbatim).

11:34AM 4 Q And it's held in the name of Hawai'i Partners?

11:34AM 5 A Yes.

11:34AM 6 Q If we go to 11-75, and you see this notice of transfer in

11:34AM 7 the top right corner for that same vehicle, EBYGRL?

11:34AM 8 A Yes.

11:34AM 9 Q The date here, it's an earlier date of January 2015?

11:34AM 10 A Yes.

11:34AM 11 Q And so previously, who was the prior owner before Hawai'i

11:34AM 12 Partners?

11:34AM 13 A Kaulana Freitas.

11:34AM 14 MR. AKINA: If we could publish Exhibit 11-78. Zoom

11:34AM 15 in on vehicle information.

11:34AM 16 BY MR. AKINA:

11:34AM 17 Q Is this for the Volkswagen van?

11:34AM 18 A Yes.

11:34AM 19 Q And this is a 1961 model?

11:34AM 20 A Yes.

11:34AM 21 Q And what is the license number?

11:34AM 22 A SYB762.

11:35AM 23 Q And the VIN?

11:35AM 24 A 685167.

11:35AM 25 Q And what date was this registration issued?

11:35AM 1 A 7/17/2017.

11:35AM 2 Q And zooming out, it's also held in Hawai'i Partners' name?

11:35AM 3 A Yes.

11:35AM 4 MR. AKINA: And can we publish Exhibit 11-77.

11:35AM 5 THE COURT: Go ahead.

11:35AM 6 BY MR. AKINA:

11:35AM 7 Q Focusing on the vehicle information, is this that same

11:35AM 8 vehicle license plate SYB762?

11:35AM 9 A Yes.

11:35AM 10 Q So still for the Volkswagen van?

11:35AM 11 A Right.

11:35AM 12 Q And it's an older date here now, August of 2016; is that

11:35AM 13 right?

11:35AM 14 A Yes, August 23rd, 2016.

11:35AM 15 Q And if we zoom out, who was the previous owner?

11:35AM 16 A Delia Ann M. Fabro.

11:36AM 17 MR. AKINA: If we could publish Exhibit 11-79.

11:36AM 18 THE COURT: Yes.

11:36AM 19 BY MR. AKINA:

11:36AM 20 Q Focusing on vehicle information, this one is made by Ford,

11:36AM 21 so this is for the Ford Bronco?

11:36AM 22 A That's correct.

11:36AM 23 Q And what's the -- a 1970 model?

11:36AM 24 A Yes.

11:36AM 25 Q And what is the license number?

11:36AM 1 A TTY105.

11:36AM 2 Q And the VIN?

11:36AM 3 A U15GLG85573.

11:36AM 4 Q What is the issuance date for this registration?

11:36AM 5 A 5/20/2019.

11:36AM 6 Q And zooming out, is it held in the name of Hawai'i

11:36AM 7 Partners?

11:36AM 8 A Yes.

11:36AM 9 Q So the registration dates that we looked over, that ranges

11:36AM 10 from 2016 to 2019; is that correct?

11:36AM 11 A That's correct.

11:36AM 12 Q And based on -- and is it your understanding that that's

11:37AM 13 the time frame where Michael Miske's companies were in

11:37AM 14 operation?

11:37AM 15 A Yes.

11:37AM 16 Q So each of these would be considered property of Hawai'i

11:37AM 17 Partners?

11:37AM 18 A Yes, according to the registration, yeah.

11:37AM 19 Q It's registered in Hawai'i Partners' name.

11:37AM 20 A Yes.

11:37AM 21 MR. AKINA: And we can take this down.

11:37AM 22 BY MR. AKINA:

11:37AM 23 Q Was artwork, including paintings and sculptures, also

11:37AM 24 found at the 6 Lumahai residence?

11:37AM 25 A Yes.

11:37AM 1 Q And that was also in July of 2020?

11:37AM 2 A Yes.

11:37AM 3 MR. AKINA: If I can show the witness a series of
11:37AM 4 exhibits from the 47th supplemental list, starting with 11-80?

11:37AM 5 THE COURT: Go ahead.

11:37AM 6 MR. AKINA: And 11-81. 11-82. 11-84. 11-85. 11-86.
11:38AM 7 11-87. 11-88. And 11-89.

11:38AM 8 BY MR. AKINA:

11:38AM 9 Q Are these pictures of artwork and paintings and sculptures
11:38AM 10 that were at the 6 Lumahai residence?

11:38AM 11 A Yes.

11:38AM 12 MR. AKINA: I'd offer Exhibits 11-80 through 11-82 and
11:38AM 13 11-84 through 11-89 into evidence.

11:38AM 14 THE COURT REPORTER: Can you say that again? 11 dash?

11:38AM 15 MR. AKINA: 11-80 through 11-82 and 11-84 through
11:38AM 16 11-89 into evidence.

11:38AM 17 THE COURT: Any objection to those nine exhibits?

11:38AM 18 MR. KENNEDY: No objection.

11:38AM 19 THE COURT: Without objection, those nine exhibits are
11:38AM 20 each admitted. That's 11-80 through 11-82 and 11-84 through
11:39AM 21 11-89. You may publish.

11:38AM 22 (Exhibits 11-80 through 11-82 and 11-84 through 11-89 were
11:38AM 23 received in evidence.)

11:39AM 24 MR. AKINA: If we could start with 11-80.

11:39AM 25 BY MR. AKINA:

11:39AM 1 Q Is this painting Ludavico & Ludovio by an artist named
11:39AM 2 Retna?
11:39AM 3 A Yes.
11:39AM 4 MR. AKINA: Can we go to 11-81.
11:39AM 5 BY MR. AKINA:
11:39AM 6 Q Is this a painting Watermark by artist Retna?
11:39AM 7 A Yes.
11:39AM 8 MR. AKINA: Can we go to 11-82.
11:39AM 9 BY MR. AKINA:
11:39AM 10 Q Is this a painting Forever Young by Retna?
11:39AM 11 A Yes.
11:39AM 12 MR. AKINA: Can we go to the second page of the
11:39AM 13 document. And focusing in on -- on the back of the painting
11:39AM 14 itself.
11:39AM 15 BY MR. AKINA:
11:39AM 16 Q Can you make out the words "Forever" in the top left box?
11:39AM 17 A Yes.
11:39AM 18 Q And the top middle box, does that appear to be the word
11:40AM 19 "Young"?
11:40AM 20 A It appears to be, yeah.
11:40AM 21 MR. AKINA: If we can publish Exhibit 9-1349 from the
11:40AM 22 36 supplemental list, already in evidence.
11:40AM 23 THE COURT: Go ahead.
11:40AM 24 MR. AKINA: Go to page 8.
11:40AM 25 BY MR. AKINA:

11:40AM 1 Q Does this --

11:40AM 2 MR. AKINA: And if we can zoom in on the top left
11:40AM 3 corner with the invoice to and information below it as well.

11:40AM 4 BY MR. AKINA:

11:40AM 5 Q Does this appear to be an invoice to Michael Miske dated
11:40AM 6 April 19, 2019, for Forever Young by Retna?

11:40AM 7 A Yes.

11:40AM 8 MR. AKINA: And zooming out, if we can focus on the
11:40AM 9 purchase price.

11:40AM 10 BY MR. AKINA:

11:41AM 11 Q What was the price here?

11:41AM 12 A \$195,000.

11:41AM 13 MR. AKINA: If we can publish Exhibit 11-84.

11:41AM 14 BY MR. AKINA:

11:41AM 15 Q Is this the painting Sangre Oscura by the artist Retna?

11:41AM 16 A Yes.

11:41AM 17 MR. AKINA: If we can go to Exhibit 11-85.

11:41AM 18 BY MR. AKINA:

11:41AM 19 Q Is this painting Graffiti Does It by OG Slick?

11:41AM 20 A Yes.

11:41AM 21 MR. AKINA: If we go to 11-87.

11:41AM 22 BY MR. AKINA:

11:41AM 23 Q Is this a sculpture Uzi Does It by OG Slick?

11:41AM 24 A Yes.

11:41AM 25 MR. AKINA: If we can now publish 11-86.

11:41AM 1 BY MR. AKINA:

11:41AM 2 Q Is this a sculpture titled Slick Skull also by OG Slick?

11:41AM 3 A Yes.

11:41AM 4 Q And what does that --

11:42AM 5 MR. AKINA: If we can focus on that document in front
11:42AM 6 of the skull.

11:42AM 7 BY MR. AKINA:

11:42AM 8 Q What is that?

11:42AM 9 A It's a certificate of authenticity.

11:42AM 10 MR. AKINA: Can we zoom out? If we could publish
11:42AM 11 Exhibit 11-88.

11:42AM 12 BY MR. AKINA:

11:42AM 13 Q Is this a painting Speaking in Tongues by an artist Defer,
11:42AM 14 also Alex Kizu?

11:42AM 15 A Yes.

11:42AM 16 MR. AKINA: And if we could publish Exhibit 11-89.

11:42AM 17 BY MR. AKINA:

11:42AM 18 Q Is this a painting by the same artist titled Spiritual
11:42AM 19 Language?

11:42AM 20 A It is.

11:42AM 21 Q And is that -- were you able to look previously at that
11:42AM 22 blue tape on the top?

11:42AM 23 A Yes.

11:42AM 24 Q And what was written there?

11:42AM 25 A The name of the painting.

11:42AM 1 MR. AKINA: We can take this down.

11:42AM 2 BY MR. AKINA:

11:43AM 3 Q Were there several bank accounts that were also found?

11:43AM 4 A Yes, there were several bank accounts that were seized in
11:43AM 5 July of 2020.

11:43AM 6 Q And what were those bank accounts?

11:43AM 7 A Mostly business bank accounts associated with the
11:43AM 8 Kama'aina family of companies, and then there was one personal
11:43AM 9 bank account of Mr. Miske's.

11:43AM 10 Q And so let's focus on the personal one first. Is that a
11:43AM 11 Hawaii Central Federal Credit Union account ending 075?

11:43AM 12 A I know it's a Hawaii Central, yes.

11:43AM 13 Q Did you schedule out activity for that account from
11:43AM 14 August 2019 to approximately July 2020?

11:43AM 15 A Yes.

11:43AM 16 Q And that would show money coming in, money coming out of
11:43AM 17 the account?

11:43AM 18 A Right.

11:43AM 19 MR. AKINA: Could we show the witness Exhibit 11-63.

11:44AM 20 THE COURT: Go ahead.

11:44AM 21 BY MR. AKINA:

11:44AM 22 Q And is this that schedule that you created?

11:44AM 23 A It is.

11:44AM 24 Q And here you listed the account number as ending in 075?

11:44AM 25 A Right.

11:44AM 1 MR. AKINA: I'd offer Exhibit 11-63 into evidence.

11:44AM 2 THE COURT: Any objection?

11:44AM 3 MR. KENNEDY: Give me a moment to just go through the
11:44AM 4 pages, Your Honor.

11:44AM 5 THE COURT: Yes.

11:44AM 6 MR. KENNEDY: Thank you.

11:44AM 7 MR. AKINA: If we could scroll through the pages.

11:44AM 8 MR. KENNEDY: No objection. Thank you.

11:44AM 9 THE COURT: 11-63 then is admitted without objection.
11:44AM 10 You may publish it.

11:44AM 11 (Exhibit 11-63 was received in evidence.)

11:44AM 12 MR. AKINA: If we could go back to the first page, and
11:44AM 13 just focusing on the top with the information on the accounts.
11:45AM 14 Along with the titles.

11:45AM 15 BY MR. AKINA:

11:45AM 16 Q Okay. So this is Michael Miske's personal account. At
11:45AM 17 some point in time were there other people added on as
11:45AM 18 signatories?

11:45AM 19 A Yes.

11:45AM 20 Q Who were those people?

11:45AM 21 A Delia Ann Fabro-Miske and Maydeen Stancil.

11:45AM 22 Q And the date there is October 2020. Is that after the
11:45AM 23 seizure took place?

11:45AM 24 A Correct.

11:45AM 25 Q And the activity that's shown here, that's for the time

11:45AM 1 period going up to July 17, 2020?

11:45AM 2 A Yes.

11:45AM 3 MR. AKINA: If we can zoom out.

11:45AM 4 BY MR. AKINA:

11:45AM 5 Q Okay. There are some red highlighted cells here. What
11:45AM 6 are those -- what do those represent?

11:45AM 7 A The highlights are just noting deposits that were made
11:46AM 8 into the account from the Kama'aina family of companies.

11:46AM 9 Q Did that include Kama'aina Termite and Pest Control?

11:46AM 10 A Yes.

11:46AM 11 MR. AKINA: And for this first red cell, if we could
11:46AM 12 focus on that as well as the balance and name portion to the
11:46AM 13 right.

11:46AM 14 BY MR. AKINA:

11:46AM 15 Q So this was almost \$4,000 deposited?

11:46AM 16 A Right.

11:46AM 17 Q And if we zoom out, what was the date for that
11:46AM 18 transaction?

11:46AM 19 A August 26, 2019.

11:46AM 20 Q And there's a memo to the right of it. What is that memo?

11:46AM 21 A The memo says "Payroll."

11:46AM 22 Q So was that one of the categories of money that was coming
11:46AM 23 in from the Kama'aina family of companies?

11:46AM 24 A Yes.

11:46AM 25 MR. AKINA: And looking at the very bottom of this

11:46AM 1 first page, that red highlight, if we could focus on that
11:46AM 2 information to the -- all the way to the far right. Yeah.

11:46AM 3 BY MR. AKINA:

11:46AM 4 Q This is another type of inflow of money?

11:47AM 5 A Right, yeah, and the -- the account there, yeah, I would
11:47AM 6 group the inflow as roughly into two categories, one in, you
11:47AM 7 know, payroll or maybe normal, you know, regularly scheduled,
11:47AM 8 let's say, additions. And then you have these larger
11:47AM 9 shareholder distributions. So this is one of the shareholder
11:47AM 10 distributions from Kama'aina Holdings.

11:47AM 11 Q And if we go to the second page, we see additional
11:47AM 12 highlights. And if we go to the third page, additional
11:47AM 13 highlights. Are those additional monies coming in from those
11:47AM 14 companies?

11:47AM 15 A Yes.

11:47AM 16 Q And so on this third page on October 2nd of 2019 --

11:47AM 17 MR. AKINA: Can we focus on those top two red
11:47AM 18 highlights going to the far right?

11:47AM 19 BY MR. AKINA:

11:47AM 20 Q The bottom one for \$3,700, is that also from another
11:47AM 21 company, Kama'aina Plumbing and Renovations?

11:47AM 22 A Yes.

11:48AM 23 MR. AKINA: And then if we go to page 8.

11:48AM 24 BY MR. AKINA:

11:48AM 25 Q We skipped a few pages, but are there regular inflows of

11:48AM 1 money?

11:48AM 2 A Yes.

11:48AM 3 Q And is that consistent with payroll, also approximately
11:48AM 4 every two weeks?

11:48AM 5 A Yes.

11:48AM 6 MR. AKINA: And we're on this final page of the
11:48AM 7 document -- or, no, we're not. We are on the eighth page of
11:48AM 8 the document, and looking at these three red cells, and if we
11:48AM 9 could zoom in all the way to the right.

11:48AM 10 BY MR. AKINA:

11:48AM 11 Q This is January 2020. What are the amounts here?

11:48AM 12 A \$40,000 from Kama'aina Holdings, 50,000 from Kama'aina
11:48AM 13 Termite and Pest Control, and \$5,299.43 from Kama'aina Termite.

11:48AM 14 Q Over the period that you scheduled out here from
11:49AM 15 August 20, 2019, to July 17, 2020, about how much money came in
11:49AM 16 from Kama'aina companies?

11:49AM 17 A This is over \$200,000.

11:49AM 18 MR. AKINA: And if we go to the last page of the
11:49AM 19 document. Looking at that line item, July 17, 2020. The one
11:49AM 20 below that.

11:49AM 21 BY MR. AKINA:

11:49AM 22 Q This one is to -- is this money coming in or going out?

11:49AM 23 A So this is money going out of the account.

11:49AM 24 Q Can you explain what this transaction shows?

11:49AM 25 A Yes. So we served a seizure warrant for -- for this bank

11:49AM 1 account on Hawaii Central Federal Credit Union, and just the
11:50AM 2 logistics and process of that is when a seizure warrant is
11:50AM 3 served, the check is made out to the United States Marshals
11:50AM 4 Service to go into an escrow or holding account.

11:50AM 5 So what you're seeing here is that check coming out to
11:50AM 6 go to the Marshals Service for the balance of the account at
11:50AM 7 that time.

11:50AM 8 Q Okay. So you said balance of the account. That means all
11:50AM 9 the money that was in there as of that date?

11:50AM 10 A Yeah, correct.

11:50AM 11 Q And what was the amount?

11:50AM 12 A \$81,656.56.

11:50AM 13 Q Okay. So fair to say that this account contained proceeds
11:50AM 14 from Kama'aina Termite and Pest Control and other companies
11:50AM 15 from the Kama'aina family of companies?

11:50AM 16 A Yes.

11:50AM 17 MR. AKINA: We can take this down.

11:50AM 18 BY MR. AKINA:

11:50AM 19 Q You testified that there were other business bank accounts
11:50AM 20 that were also seized.

11:50AM 21 A That's correct.

11:50AM 22 Q Did you schedule out just showing the accounts, the
11:51AM 23 account numbers and the amounts taken or seized?

11:51AM 24 A I did, yeah.

11:51AM 25 Q And that was pursuant to a court order?

11:51AM 1 A Yes, the -- yeah, pursuant to the -- yeah, the seizure
11:51AM 2 warrant.
11:51AM 3 MR. AKINA: If we could show the witness Exhibit 11-91
11:51AM 4 from the 47th supplement.
11:51AM 5 THE COURT: Go ahead.
11:51AM 6 BY MR. AKINA:
11:51AM 7 Q Does this table show those business bank accounts and the
11:51AM 8 personal Hawaii Central Federal Credit Union account that we
11:51AM 9 just looked at?
11:51AM 10 A Yes, it does.
11:51AM 11 MR. AKINA: I'd offer Exhibit 11-91 into evidence.
11:51AM 12 THE COURT: Any objection?
11:51AM 13 MR. KENNEDY: No objection.
11:51AM 14 THE COURT: 11-91 is admitted. You may publish it.
11:51AM 15 (Exhibit 11-91 was received in evidence.)
11:51AM 16 MR. AKINA: Can we focus on the table?
11:51AM 17 BY MR. AKINA:
11:51AM 18 Q And so in total, there were two accounts from Kama'aina
11:52AM 19 Termite and Pest Control and two from Oahu Termite and Pest
11:52AM 20 Management?
11:52AM 21 A Yeah, that's correct. Yeah, like a regular maybe checking
11:52AM 22 or operating account, and then a savings account for each.
11:52AM 23 Q And then one from Kama'aina Plumbing and Renovations?
11:52AM 24 A Yes.
11:52AM 25 Q And so this shows the seized balance. That's the balances

11:52AM 1 that were in the accounts when they were seized?

11:52AM 2 A That's correct.

11:52AM 3 Q So for the Bank of Hawaii account ending 602 for Kama'aina

11:52AM 4 Termite and Pest Control, how much was in that?

11:52AM 5 A \$1,063,427.35.

11:52AM 6 Q And for the Bank of Hawaii account ending 415 for the

11:52AM 7 Kama'aina Termite and Pest Control account, how much was in

11:52AM 8 that?

11:52AM 9 A \$300,372.85.

11:53AM 10 Q And for the account -- Bank of Hawaii account ending 414

11:53AM 11 for Oahu Termite and Pest Management, how much was in that?

11:53AM 12 A \$206,725.80.

11:53AM 13 Q And for the Bank of Hawaii account ending 218 for O'ahu

11:53AM 14 Termite and Pest Management, how much was in that?

11:53AM 15 A \$170,105.72.

11:53AM 16 Q And for the Bank of Hawaii account ending in 220 for

11:53AM 17 Kama'aina Plumbing and Renovations, how much was in that?

11:53AM 18 A \$22,710.48.

11:53AM 19 Q And you said that these are business operating, savings or

11:53AM 20 checking accounts?

11:53AM 21 A Yes.

11:53AM 22 Q So it would contain proceeds from profits that the company

11:53AM 23 has made?

11:53AM 24 A Yes.

11:53AM 25 Q It would contain money that could be used for -- to pay

11:53AM 1 for expenses?

11:53AM 2 A Yes.

11:53AM 3 Q Money that could be used to be paid for -- to continue the
11:53AM 4 operations of those companies?

11:54AM 5 A Yes.

11:54AM 6 MR. AKINA: No further questions at this time.

11:54AM 7 THE COURT: Mr. Kennedy, you reserve cross until
11:54AM 8 tomorrow?

11:54AM 9 MR. KENNEDY: Yes.

11:54AM 10 THE COURT: All right.

11:54AM 11 MR. AKINA: Your Honor, may --

11:54AM 12 THE COURT: You may step down. Thank you, sir.

11:54AM 13 MR. AKINA: May we approach, Your Honor?

11:54AM 14 THE COURT: Yes.

11:54AM 15 (Sidebar on the record:)

11:54AM 16 MR. AKINA: So that's all the witnesses that we have.

11:55AM 17 We would be -- if cross-examination had happened, we would be
11:55AM 18 prepared to rest. We don't have -- we don't plan on calling
11:55AM 19 additional witnesses unless something unforeseen happens on
11:55AM 20 cross-examination.

11:55AM 21 THE COURT: Okay.

11:55AM 22 MR. AKINA: So that's what we have. That's the
11:55AM 23 state of --

11:55AM 24 THE COURT: So right now then, that means we will be
11:55AM 25 finished for today --

11:55AM 1 MR. AKINA: Correct.

11:55AM 2 THE COURT: -- and that the two crosses will be

11:55AM 3 tomorrow.

11:55AM 4 MR. AKINA: Correct.

11:55AM 5 THE COURT: Okay. And then tomorrow, assuming no

11:55AM 6 other witnesses are prompted by the cross, the defense has

11:55AM 7 Mr. Hines, I assume.

11:55AM 8 MS. PANAGAKOS: We do.

11:55AM 9 THE COURT: And then anyone else that you intend to

11:55AM 10 call at this point?

11:55AM 11 MS. PANAGAKOS: Possibly Mr. Miske.

11:55AM 12 THE COURT: Possibly Mr. Miske, okay.

11:55AM 13 Okay. So it's possible that the jury could have this

11:55AM 14 tomorrow.

11:55AM 15 MS. PANAGAKOS: Yes.

11:55AM 16 THE COURT: Okay. All right. We're just about at

11:55AM 17 noon, so we're going to soon take a lunch break, but I guess it

11:55AM 18 will be a break for the day at this point.

11:55AM 19 Anything else?

11:55AM 20 MR. KENNEDY: Nothing from us.

11:55AM 21 MR. AKINA: Not from the government.

11:55AM 22 THE COURT: Thank you.

11:55AM 23 MR. AKINA: Oh, sorry, we do have one thing. There

11:56AM 24 was one item that we intentionally left out of the artwork.

11:56AM 25 It's a painting --

11:56AM 1 THE COURT: Brian Flores?

11:56AM 2 MR. AKINA: Yes, that's the one that the government is
11:56AM 3 going to concede. So we'd just ask that it be taken off the
11:56AM 4 verdict form that goes to the jury.

11:56AM 5 THE COURT: Okay. I was going to tell you this at the
11:56AM 6 end of the day today, but we just published the verdict form
11:56AM 7 and the jury instructions from the last discussion we had
11:56AM 8 because there were no changes from the last discussion. So I
11:56AM 9 think --

11:56AM 10 MR. KENNEDY: Maybe we can just do a stipulation to
11:56AM 11 say that one is no longer --

11:56AM 12 THE COURT: Well, we can go in and -- I mean, the jury
11:56AM 13 doesn't have it yet, so we can go ahead and modify the -- there
11:56AM 14 would be no changes to the instructions. It would just be the
11:56AM 15 verdict form just to remove that.

11:56AM 16 MR. AKINA: Just to remove that.

11:56AM 17 THE COURT: I think we can accomplish that.

11:56AM 18 MR. AKINA: I believe that you listed out in the jury
11:56AM 19 instructions as well.

11:56AM 20 MR. KENNEDY: In Instruction 1.

11:56AM 21 THE COURT: Ah, okay. So we'll edit that in both
11:56AM 22 cases, and then publish new ones later today.

11:57AM 23 MR. AKINA: Thank you.

11:57AM 24 MS. PANAGAKOS: Your Honor, I'm not positive about
11:57AM 25 Mr. Hines. That will depend on the cross.

11:57AM 1 THE COURT: Sure. Sure. Thank you.

11:57AM 2 (End of sidebar.)

11:57AM 3 THE COURT: All right. So it is just about noon, and
11:57AM 4 although I thought we would be taking a lunch break right
11:57AM 5 around this point, we're actually going to be taking a break
11:57AM 6 for the trial day. We will resume tomorrow morning at 8:30 for
11:57AM 7 the cross-examinations of the two witnesses that took the stand
11:57AM 8 earlier -- earlier this morning.

11:57AM 9 Okay. So as we go to break, I'll remind our jury to
11:57AM 10 please once again refrain from discussing the substance of this
11:57AM 11 case with anyone, including each other, although you obviously
11:57AM 12 did deliberate on Phase 1. At this point until deliberations
11:57AM 13 begin on Phase 2, no discussions amongst one another regarding
11:58AM 14 the substance of this case. Also do not discuss -- do not
11:58AM 15 access, rather, any media or other accounts of this case that
11:58AM 16 may be out there, and do not conduct your own investigation
11:58AM 17 into anything relating to this case.

11:58AM 18 So we'll see you tomorrow morning at 8:30.

11:58AM 19 (Proceedings were concluded at 11:58 a.m.)

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1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, January 16, 2025.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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